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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fortieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Eighth periodic reports of States parties due in 1990

Addendum

AUSTRALIA*

[10 June 1991]

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* The present report constitutes the seventh and eighth periodic reports of Australia, due on 30 October 1988 and 30 October 1990 respectively, submitted in one document.

For the fifth and sixth periodic reports submitted by the Government of Australia and the summary records of the meetings of the Committee at which those reports were considered, see:

Fifth periodic report - CERD/C/115/Add.3 (CERD/C/SR.816-SR.817);
Sixth periodic report - CERD/C/146/Add.3 (pending consideration).

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INTRODUCTION

1. This report reviews and updates developments in Australia over the period January 1987 to December 1990. In preparing the report the repetition of information provided in previous reports has been avoided as much as possible. Australia has a federal system of government and this report presents information on developments in both the federal (or Commonwealth) and State spheres.

A. Federal system

2. Australia is a federation in which legislative, executive and judicial powers are shared between the federal Parliament, the executive and the judiciary and the corresponding organs of the six States: New South Wales; Victoria; Queensland; Western Australia; South Australia and Tasmania. In each of these political units there is a parliament elected by the people, an executive responsible to that parliament, formed by the majority party or parties in parliament, and an independent judiciary.

3. In addition to the States, there are also a number of Australian Territories, which are those parts of Australia not part of a State. Australia has ten territories in all. The inhabited territories are:

(a) Territories internal to the mainland: the Australian Capital Territory (which includes Canberra, the capital city of Australia and seat of the federal Government), the Northern Territory and the Jervis Bay Territory;

(b) Territories external to the mainland: The Australian Antarctic Territory, Norfolk Island, Cocos (Keeling) Islands and Christmas Island.

The uninhabited Territories, which are all external to the mainland are: the Territory of Ashmore and Cartier Islands, the Coral Sea Islands Territory and the Territory of Heard Island and McDonald Islands.

4. Two of the Territories - the Australian Capital Territory and the Northern Territory - are self-governing and may be regarded, for the purposes of this report, as standing in the same position as a State of Australia. A third Territory - Norfolk Island - has more limited legislative and executive government to enable it to run its own affairs to the greatest practicable extent. The federal Government is responsible for the administration of the remaining territories.

B. Legal system

5. The laws applying in Australia fall into two broad categories:

(a) Lesiglation in the form of statutes passed by a parliament or subordinate legislation made by the executive which is subject to disallowance by Parliament; and

(b) Rules derived from decisions of courts, being:

(i) The common law proper (i.e. laws developed through judicial recognition, independent of any legislative enactment; and
(ii) Judicial interpretation of legislation.

6. In the Australian legal system, every person, whether private citizen or government official, is equally subject to the law. Governments must operate through and within the law. Government officials must have legal authority for their actions and are subject to legal sanctions if they contravene the law, including sanctions for breach of the criminal law. Disciplinary proceedings may also be brought against government officials.

7. Under the Constitution the federal Parliament is granted specified legislative powers. Most of those powers are possessed concurrently with the States while a smaller number are vested exclusively in the Commonwealth. Each State has power, which it exercises subject to the Constitution, to make laws for the peace, order and good government of the State. Where legislative power is possessed concurrently by the Commonwealth and the States, the Constitution provides that federal laws prevail over inconsistent State laws.

8. The Constitution confers on the federal Parliament the power to make laws with respect of external affairs. In so far as the elimination of racial discrimination constitutes and "external affair", it will come within this power. Action taken to discharge treaty obligations, for example, under the Convention for the Elimination of Racial Discrimination, clearly comes within the external affairs power. This may extend to procuring compliance with the spirit of a treaty. Even if a matter is not the subject of a treaty obligation, it may nevertheless come within the external affairs power as a matter of international concern. Racial discrimination is considered to be covered by this concept.

9. The Constitution also confers on the federal Parliament the power to make laws with respect to the people of any "race" for whom it is deemed necessary to make special laws. This confers plenary power on the federal Parliament to legislate with respect to Australia's indigenous peoples - Aboriginal and Torres Strait Islander peoples. It should be noted however, that legislation applying equally to the people of all races, such as provisions of the Racial Discrimination Act 1975, does not come within this head of power.

10. Other constitutional powers which may assist the federal Parliament to make laws with respect to racial discrimination include the powers to make laws with respect to foreign corporations and trading or financial corporations formed within the limits of the Commonwealth.

11. The State parliaments also have power to make laws relating to racial discrimination. Although the Constitution ensures that where any law of a State is inconsistent with a federal law the State law shall be invalid to the extent of the inconsistency, the federal Government has a policy of consulting with State Governments on matters affecting areas of State Government concern. The consultation processes and political considerations generated by Australia's federal system of government operate as important considerations in any decision by the federal Government to exercise its powers with respect to racial discrimination.

12. Federal anti-discrimination legislation contains provisions preserving the operation of acceptable State legislation. The provisions in the federal legislation are designed to ensure the continued operation of any relevant State legislation. The provision operates in practice by a person electing to make a complaint under either State legislation or federal legislation. Where a person elects to make a complaint under State legislation, the person is deemed never to have been entitled to make a complaint under federal legislation. The central point is that in many cases there will be an option to pursue either State or federal remedies.

C. Australian population overview

13. It is important to appreciate not only the constitutional but also the social and demographic context of Australia's report.

14. The following information is provided from the most recent (1986) census (next census due July 1991):

Total Australian population	15,602,200
Born overseas	3,477,400 (22%)
Born overseas or at least one overseas-born parent	1.8 million (> one third)
Born in non-English speaking countries	> one half
Aboriginal or Torres Strait Islander (i.e. indigenous) Australians	1.5%

(a) Ancestry, Australia, 1986 census (as self-identified by census respondents):

	%		%
Aboriginal	1.0	Australian	18.6
Austrian	0.1	British	2.1
Chinese	1.1	Croatian	0.3
Dutch	1.4	English	36.8
Filipino	0.2	French	0.4
German	2.4	Greek	1.9
Hungarian	0.3	Indian	0.3
Irish	5.2	Italian	3.7
Jewish	0.2	Lebanese	0.5
Macedonian	0.2	Maltese	0.5
New Zealander	0.3	Polish	0.6
Portuguese	0.1	Russian	0.2
Scottish	3.9	Spanish	0.3
Turkish	0.2	Ukranian	0.1
Vietnamese	0.4	Welsh	0.5
Yugoslavian	0.7		

	%
Other stated ancestry	8.1
Mixed, so described	0.1
Inadequately described	0.1
Not known	0.5
Not stated	6.8

(b) Estimated resident population by country of birth, Australia, June 1990:

	%		%
Australia	77.46	Africa, total	.83
Americans	.88	Canada/USA	.43
Asia	4.76	Europe	6.80
Oceania	.43	New Zealand	1.69

Total: 17.0862 million persons

(c) Settler arrivals by country of birth, Australia, July 1986-June 1990:

	%
UK and Ireland	19.75
Northern Europe	5.68
Southern Europe	5.30
Middle East	5.85
USA/Canada	2.28
South and other America	2.53
Africa	4.72
Asia	36.75
Oceania	2.99
New Zealand	13.22
Other	.27

Total immigrants: .523141 million persons

D. Multicultural Australia

15. The Australian Government is firmly committed to a policy of multiculturalism, which assures the right of all individuals to retain and develop their culture, language and lifestyle and to participate fully in all aspects of diverse cultures, and aims to ensure that full use is made of the skills and abilities of all Australian residents regardless of cultural background or country of origin.

16. In defining multiculturalism - as opposed to use of the term as simply a description of Australia's irreversible cultural and ethnic diversity - the federal Government has emphasized that its multicultural policy is quite distinct from immigration policy. It plays no part in migrant selection.

17. The Government's definition of multicultural policy has three dimensions:

(a) Cultural identity: the right of all Australians, within carefully defined limits, to express and share their individual cultural heritage, including their language and religion;

(b) Social justice: the right of all Australians to equality of treatment and opportunity, including the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth; and

(c) Economic efficiency: the need to maintain, develop and utilize effectively the skills and talents of all Australians, regardless of background.

18. There are also limits to multiculturalism, and these have been made explicit:

(a) Multicultural policies are based upon the premise that all Australians should have an overriding and unifying commitment to Australia, to its interests and future, first and foremost;

(b) Multicultural policies require all Australians to accept the basic structures and principles of Australian society - the Constitution and the rule of law, tolerance and equality, parliamentary democracy, freedom of speech and religion, English as the national language, and equality of the sexes;

(c) Multiculturalism policies impose obligations as well as confer rights: the right to express one's own culture and beliefs involves a reciprocal responsibility to accept the right of others to express their views and values.

19. In July 1989, the federal Government released the National Agenda for a Multicultural Australia, the most comprehensive and forward-looking statement of multicultural policy ever endorsed by an Australian Government, federal or State.

20. The significance of the National Agenda is threefold:

(a) It clearly defined the policy of multiculturalism, articulating the long-term goals and objectives that underpin the policy;

(b) It set in train a series of enduring structural and institutional changes; and

(c) It included a broad package of immediate programme initiatives.

E. Indigenous Australians

21. Aboriginal and Torres Strait Islander Australians are entitled by law to the full range of fundamental rights and freedoms of other Australians, but in practice many remain in a disadvantaged situation. The Australian Government recognizes that these citizens constitute a group for whom special measures are required and has developed a range of programmes to address the continuing effects of disadvantage. It is worth emphasizing, however, that the problems confronting Aboriginal and Torres Strait Islander peoples - just as those confronting migrants - should not be seen exclusively in terms of racial discrimination. Clashes of value systems and cultures are frequently at issue. They are not easily, nor perhaps should they be, addressed in the context of the Convention.

F. Conclusion

22. The Australian Government appreciates the careful and detailed consideration accorded by the Committee to earlier reports and looks forward to continuing, fruitful dialogue on its seventh periodic report. It is in part through such exchanges that the standards to which States parties to the Convention aspire may be fully and satifactorily realized to the benefit of all individual citizens.

I. GOVERNMENT LEGISLATIVE, JUDICIAL, ADMINISTRATIVE OR OTHER MEASURES AGAINST THE PRACTICE OF RACIAL DISCRIMINATION

A. Federal Government

1. Reference on multiculturalism

23. A central objective of the federal Government is the achievement of a fair and more just society. The ethnic, racial and religious diversity of Australia means that there exist barriers of race, language and culture which continue to prevent some Australians from gaining a fair share of society's benefits. The Government recognizes that certain, often critical government services, can miss some of their intended clientele unless special efforts are made to overcome these barriers. The government's multicultural policies are directed towards eliminating these barriers.

24. The federal Government has established an Office of Multicultural Affairs (OMA) as a result of the National Agenda for Multicultural Affairs (July 1989). The Office's role is:

(a) To advise the Prime Minister and the Government as a whole;

(b) To examine policy proposals from all areas of Government in order to assess their impact on Australia's multicultural society;

(c) To monitor and coordinate implementation of the government's Access and Equity Strategy;

(d) To develop effective liaison and consultation mechanisms with the broad community, including the ethnic communities;

(e) To initiate research into key areas of policy and programme development; and

(f) To promote wider community understanding of multiculturalism.

25. As part of its community consultation responsibilities, the Office of Multicultural Affairs employs Regional Coordinators in each State and the Northern Territory, and uses Group Facilitators to organize and report on focused discussion groups conducted in community languages. As part of this role, OMA also organizes community forums on such issues as Access and Equity, provides secretariat support to the Advisory Council on Multicultural Affairs, and funds the federation of Ethnic Communities' Councils of Australia as the peak national umbrella organization representing the special interests of non-English-speaking-background Australians.

26. The Advisory Council on Multicultural Affairs was established in 1987. Its 21 members from around Australia represent both youth and the aged, men and women, business and trade unions. Aboriginal, Anglo Celtic and non-English-speaking-background Australians.

27. In 1985, the Government initiated its Access and Equity Strategy. The goal was to ensure that immigrants and their families had equitable access to the mainstream government programmes and services which the Government provides to the community as a whole. The Strategy required all relevant government departments to prepare annual statements of action, both existing and proposed, to meet the needs of immigrants.

28. In 1986, the Government reviewed the development of the Strategy and produced guidelines which set out the action required to implement the government's policy. These required departments to prepare three-year plans for the implementation of the strategy.

29. The government's commitment to social justice for all was given renewed emphasis in 1987 when it formally adopted a Social Justice Strategy based on four principles:

(a) The fair distribution of economic resources;

(b) Protection and enhancement of an individual's rights;

(c) Opportunity for all to participate in the life of the community; and

(d) Fair access to essential community services.

30. Immigrants and Australians of non-English-speaking background have benefited substantially from the many social justice measures put into place in recent years. Mainstream programmes must take Access and Equity into account in the design and effective delivery of services, and special programmes are initiated to meet unique needs. Nevertheless, the Government recognized that barriers still exist which inhibit people from access to essential community services and from fully participating in Australia's economic and social life.

31. In 1989, the Government extended and strengthened its Access and Equity Strategy to include all Australians who may face barriers due to race, culture, religion or language, including Aboriginal and Torres Strait Islander peoples, and children whose parents come from a non-English-speaking background. The Government also decided to extend its requirements for government departments and authorities to provide a second round of three-year Access and Equity Plans for all residents of Australia.

32. The government's National Agenda for a Multicultural Australia recognizes that there is a need to promote and maintain harmonious community relations - thus a Community Relations Strategy is being effected in 1989-1991. The broad objectives of the Strategy are:

(a) To reduce the levels of discrimination and illegal or offensive behaviour by individuals or groups based on ethnicity, race, religion, culture or language;

(b) To reduce structural impediments to the acceptance of, and respect for, people of different race, ethnicity, religion, culture or language; and

(c) To foster a greater degree of acceptance of, and respect for, people of different race, ethnicity, religion, culture or language, and, through these efforts, to encourage greater awareness of the benefits of harmonious community relations in a multicultural society.

33. The Strategy addresses changes in behaviour, structural issues and changes in attitudes and focuses on areas such as legislation, the police, the media, education and housing, having identified these areas as crucial to the promotion of harmonious community relations in Australia.

34. In August 1989, the Attorney-General referred to the Law Reform Commission the question of whether laws within certain areas of federal constitutional power were appropriate to a multicultural society, and to draft amending legislation if necessary. The terms of reference were:

"(1) whether the following laws to which the Law Reform Commission Act 1979 applies, namely:

(a) laws that relate to marriage, divorce and matrimonial causes, parental rights and obligations and the custody and guardianship of children, including the Marriage Act 1961 and the Family Law Act 1975;

(b) laws relating to the formation and performance of contracts, especially consumer contracts, and in particular the Trade Practices Act 1974 and the Insurance Contracts Act 1984;

(c) laws creating offences;

are appropriate to a society made up of people from differing cultural backgrounds and from ethnically diverse communities; and

(2) any related matter".

The Law Reform Commission's report on each of these matters will consider whether the principles underlying the relevant laws, and the mechanisms available for resolving disputes arising under or concerning the law, take adequate account of the cultural diversity present in the Australian community.

35. The Commission is currently consulting the Australian community generally and ethnic and indigenous communities in particular, the Human Rights and Equal Opportunity Commission, the Family Law Council, the Administrative Review Council, the Committee of Review of Commonwealth Criminal Laws, the States, the Northern Territory and the Administration of the Australian Capital Territory and such persons and bodies as it thinks fit.

36. The Commission is to draft legislation necessary to give effect to its recommendations, and the appropriate explanatory memorandum, having regard to any constitutional limitations on federal power. The Government is awaiting the Commission's report, which is due by 30 September 1991.

2. Reference on immigration

37. Australia is committed to an immigration policy that does not discriminate on the grounds of race or ethnic origin. People from any country can be considered for migration to Australia under set and universally applied criteria laid down in legislation. In August 1989, the Parliament debated the subject and reaffirmed its support for a racially non-discriminatory immigration policy. In doing so it clearly repudiated the proposition that such a policy was not supportive of social cohesion.

3. Reference on non-discriminatory provisions of the Citizenship Act

38. The Australian Citizenship Act sets out the requirements people have to meet to become Australian citizens. The requirements are the same for everyone regardless of their sex, marital status or nationality. Following amendments to the Act in 1984, applicants must:

(a) Have been permanently resident in Australia for at least 2 of the previous 5 years, including 12 months in the previous 2 years;

(b) Be able to demonstrate an understanding of the significance of acquiring Australian citizenship, including the responsibilities and privileges of being a citizen;

(c) Be of good character;

(d) Intend to reside or continue to reside in Australia, or to maintain a close and continuing association with Australia.

39. Spouses of Australian citizens, people with severe hearing, speech or sight impairments, and people over 50 years of age are exempt from the requirement to have a knowledge and understanding of the rights and privileges of citizenship and the English language requirement.

40. The main objectives of the substantial amendments made by Parliament included:

(a) Removal of discriminatory provisions on the basis of gender, marital status or nationality;

(b) Reduction of the residential and English language requirement;

(c) Provision for review rights under the auspices of the Administrative Appeals Tribunal (AAR) to persons denied or deprived of citizenship; and

(d) Provision for the restoration of Australian citizenship to those who lost it automatically when acquiring another citizenship in circumstances of hardship, duress or ignorance of the automatic loss provisions.

41. The Australian Government has a long-standing policy of promoting the acquisition of citizenship by permanent residents. The past removal of structural barriers such as lengthy periods of residence and language proficiency requirements has been complimented by public campaigns designed to enhance the status of citizenship within the community as a whole and encourage the acquisition among those eligible to apply.

42. The most recent campaign was a special Year of Citizenship which commenced in September 1988, the fortieth anniversary of the Second Reading speech for the introduction of the Australian Citizenship Act in 1949. Further major activities were held on Australia Day, 26 January 1989, when the fortieth anniversary of the commencement of the Australian Citizenship Act was celebrated with special citizenship promotional activities. The year-long activities and special functions resulted in increased numbers of applications from individuals whose national groups were previously underrepresented.

4. Major federal legislation for eliminating racial discrimination

43. The main federal legislation relevant to the Convention is the Racial Discrimination Act 1975 (as amended in December 1986 - see sixth periodic report) and the Human Rights and Equal Opportunity Commission Act 1986 (as amended).

44. Details of the Racial Discrimination Act 1975 were included in Australia's initial report to the Committee and amendments to the Act have been recorded in subsequent reports. In brief, since 30 October 1975 when the Convention entered into force in Australia, the Racial Discrimination Act 1975 has operated to prohibit legislatively in Australia and in Australian territories all forms of racial discrimination, including those enumerated in article 5 of the Convention.

45. As explained in the initial report, the Racial Discrimination Act 1975 makes it unlawful to commit an act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, thus applying the definition of "discrimination" in article 1 of the Convention. Recent amendments to the Act have made it clear that the prohibition of racial discrimination extends to "indirect forms" of racial discrimination. The Act also guarantees equality before the law in the enjoyment of rights. This provision expressly overrides all federal, State and Territory laws that would otherwise discriminate on a racial basis and avoids the need to make piecemeal amendments to such laws.

46. A number of amendments have been made to the Racial Discrimination Act effective from December 1990, to strengthen the protection afforded by the Act. These amendments are consistent with recommendations made by the Human Rights and Equal Opportunity Commission on the basis of its experience in

admistering the Act. The adjustments remove the requirements that racial discrimination be shown to be the dominant reason for an action in order for that action to be unlawful. This provision presented a significant range of complainants with problems of proof. The Act now provides that an action is unlawful if one of the reasons for the action constitutes racial discrimination, regardless of whether it is the dominant reason.

47. The amendments make clear that unlawful racial discrimination under the Act includes "indirect discrimination", that is where a rule or requirement not explicitly based on race none the less has a discriminatory effect. They further provide that employers are vicariously liable for acts of racial discrimination by employees in connection with their duties. This will assist complainants by reducing problems that have arisen in some cases of fixing responsibility for an act of discrimination on the appropriate person; it will also encourage employers to take measures to prevent racial discrimination in the workplace.

48. The Human Rights and Equal Opportunity Commission was established at the end of 1986 by the Australian Federal Government under the Human Rights and Equal Opportunity Commission Act 1986. [This Act also provided for substantial and significant amendments to the Racial Discrimination Act 1975 (in terms of complaint handling procedures and remedies - see sixth periodic report, article 5, and above).] The Commission is a permanent statutory body with responsibility for administering legislation relevant to Australia's obligations under:

(a) The International Covenant on Civil and Political Rights;

(b) The Declaration of the Rights of the Child;

(c) The Declaration of the Rights of Mentally Retarded Persons;

(d) The Declaration on the Rights of Disabled Persons;

(e) The International Convention on the Elimination of All Forms of Racial Discrimination;

(f) The Convention concerning Discrimination in Respect of Employment and Occupation (ILO Convention No. 111);

(g) The Convention on the Elimination of all Forms of Discrimination against Women.

49. The Commission consists of a part-time President and four full-time Commissioners. The President is a former High Court Judge and the four Commissioners are:

(a) The Human Rights Commissioner;

(b) The Race Discrimination Commissioner;

(c) The Sex Discrimination Commissioner;

(d) The Privacy Commissioner.

Each Commissioner is responsible for handling complaints on behalf of the Commission within his or her respective sphere.

50. The Human Rights Commissioner is the executive head of the organization and has responsibility for the day-to-day administration of the Commission and for the handling of particular complaints under the legislation.

51. Although the Commission has overall responsibility for implementing the Racial Discrimination Act 1975, the Race Discrimination Commissioner exercises certain statutory powers of inquiry, conciliation and settlement of racial discrimination complaints on behalf of the Commission.

52. In the context of the human rights set out in the relevant international instruments, the Commission's functions include:

(a) To review federal legislation for any inconsistency with human rights or for any discriminatory provision which nullfies or impairs equality of opportunity or treatment in employment or occupation, and to propose laws that should be made, or action which should be taken by Australia on matters relating to human rights and discrimination;

(b) To inquire into any act or practice (as defined) that may be inconsistent with any human rights or which may constitute discrimination (as defined) and to prepare and publish guidelines for the avoidance of any such acts or practices;

(c) To investigate, conciliate and settle complaints about infringements of human rights and discrimination;

(d) To promote an understanding, acceptance and public discussion of human rights;

(e) To undertake and coordinate research and educational programmes for the purpose of promoting human rights and equality of opportunity and to coordinate any such programmes undertaken on behalf of Australia; and

(f) Where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings, to intervene in proceedings that involve human rights issues.

53. Under the Racial Discrimination Act 1975 the powers of the Commission include the power to:

(a) Inquire into an alleged unlawful act of racial discrimination following the receipt of a complaint in writing, or when it appears to the Commission that a person has done an act that is unlawful under the Act, and to endeavour to effect a settlement of the matter by conciliation (this power is exercised through the Race Discrimination Commissioner);

(b) Decide not to inquire into a complaint about an unlawful act;

(c) Delegate its powers under the Act to certain persons;

(d) Make an interim determination pending completion of a matter referred to it by the Race Discrimination Commissioner; and

(e) Institute proceedings in the Federal Court of Australia for an order to enforce a determination.

54. These functions, in regard to federal legislation relevant to the convention, extend to all Australian States and the two Territories.

55. The Commission's complaint-handling procedures and remedies are set out under chapter IV of this report. Arrangements are renegotiated from time to time between the federal Government and the Governments of four States whereby complaints of discrimination under federal legislation arising in those States are to be handled by the State bodies on behalf of the Commission (South Australia, Victoria, Western Australia and New South Wales). In the two States that are currently without suitable legislation (Queensland and Tasmania) and in the Northern Territory, the Commission has established its own Regional Offices.

5. Other federal Government measures

56. Australia supported the adoption of ILO Convention No. 169 (Concerning Indigenous and Tribal Peoples) at the 76th Session of the International Labour Conference in June 1989. Under article 19 (7) of the ILO Constitution, the Australian Government was required to bring the Convention before the appropriate federal and State authorities within 18 months and to inform the Director-General of measures taken in accordance with article 19 with particulars of the authorities regarded as appropriate; and of the action taken by them. Following consultations with federal and State authorities, a statement assessing Australia's compliance was prepared and tabled in Parliament in December 1990. A compliance report based on the tabled statement was sent to the International Labour Office in accordance with the Convention. A draft law and practice report is being prepared in consultation with relevant federal and State/Territory authorities to ascertain in detail the degree of compliance by Australia with the Convention. Australia has accepted responsibility for developing, with the participation of the indigenous and tribal peoples concerned, action to protect the rights of these peoples and to guarantee respect for their integrity. The Convention recognizes the aspirations of indigenous and tribal peoples to exercise control over their own institutions, ways of life and economic development, and to maintain and develop their identities, languages and religions, within the framework of the States in which they live.

57. The EEO (Commonwealth Authorities) Act 1987 provides for Equal Employment Opportunity for employees in Commonwealth/Federal Authorities that are not

staffed under the Public Service Act 1922. Relevant authorities must develop affirmative action equal employment programmes for women, Aborigines and Torres Strait Islanders, people with a disability, and people from a non-English-speaking background.

58. Section 93 of the Industrial Relations Act 1988 provides in part that the Industrial Relations Commission in the performance of its functions shall take account of the principles embodied in the Racial Discrimination Act 1975.

B. State Government

1. New South Wales

59. Under the Anti-Discrimination Act 1977, racial discrimination is prohibited in major areas of public life such as employment, education, access to public places and vehicles, accommodation, provision of goods and services, and registered clubs. The Act provides for remedies including damages and injunctions where people have been treated less favourably because of their colour, nationality and ethnic or national origin.

60. Public acts which incite hatred towards, serious contempt for, or severe ridicule of a person or group of people on the ground of their race are unlawful. In cases where racial vilification also involves threats of physical harm, criminal sanctions are available.

61. Affirmative action provisions enable public sector management plans to be prepared and positive programmes implemented to ensure that Aboriginal peoples and peoples of non-English-speaking background have equal opportunity in public sector employment.

62. The Anti-Discrimination Board has strategies to educate the community so that race discrimination is avoided. The strategies include education programmes, consultations on corporate strategy and publications. The Board co-operated with Film Australia in the production of Prejudice, a docu-drama about two incidents of discrimination (one concerned race), depicting how discrimination takes place and what can be done about it. The film is distributed for use in educational programmes.

2. Victoria

63. The Equal Opportunity Act 1977 was repealed and re-enacted in 1984 and the grounds upon which individuals may complain of discrimination expanded to include racial discrimination. Complaints may be made to the Commissioner for Equal Opportunity. The Commissioner is obliged to try and conciliate complaints but if that fails they must be referred to the Equal Opportunity Board. The Board has injunctive powers which can lead to the imposition of criminal penalties.

64. The Victorian Public Service Act 1974 requires that all officers and employees receive fair and adequate treatment in all aspects of personnel management without regard to political affiliation, race, colour, religion, national origin, sex, marital status or physical disability.

3. Queensland

65. The Queensland Government is currently considering the implementation of anti-discrimination legislation which would include race as a ground of discrimination.

66. The Government has issued Deeds of Grant in Trust to a number of Aboriginal and Torres Strait Islander communities in the State.

67. The Department of Ethnic Affairs, created by administrative arrangements, has the following objectives:

(a) To facilitate the successful settlement of migrants in Queensland;

(b) To encourage migrants to participate in the social, cultural, political and economic life of the Australian community;

(c) To promote and encourage the further building of a society in which all ethnic groups may have full expression and choice of cultural diversity;

(d) To encourage a community awareness of the value and diversity of all cultural aspects within the State of Queensland and to assist all groups who are working towards the building of a cohesive society;

(e) To take such steps in conciliation and arbitration as are considered necessary to prevent or remove discrimination against people which may be as a result of their ethnic background or characteristics; and

(f) To promote the welfare of migrants within the State of Queensland.

68. A major function of the Department is the provision of a translating and interpreting unit. The unit is engaged in translating either for newly-arrived non-English-speaking migrants or for the Government in order to advise the newly-arrived of government services.

4. South Australia

69. The Equal Opportunity Act 1984 was proclaimed on 1 March 1986. The legislation prohibits discrimination on the ground of race in the areas of employment, the awarding of qualifications, clubs and associations, education authorities, land, accommodation and the provision of goods and services. Race includes nationality, country of origin, the colour of one's skin and ancestry, or the nationality, country of origin, colour of skin and ancestry of any other person with whom the complainant resides or associates.

70. A recent amendment to the Act deems it unlawful to discriminate on the ground of race if an authority or body fails to take reasonable steps to inform itself sufficiently on the adequacy or appropriateness of qualifications or experience gained outside Australia and, in consequence of that failure, refuses to confer on the person an authorization or qualification for which the person has applied.

71. The Act does not prohibit racial vilification.

72. The Commissioner for Equal Opportunity is responsible for the administration of the Equal Opportunity Act and has the following statutory obligations:

(a) To foster and encourage amongst members of the public informed and unprejudiced attitudes with a view to eliminating unlawful discrimination;

(b) To investigate and make all reasonable attempts to resolve complaints of unlawful discrimination by conciliation;

(c) To refer unresolved matters to the Equal Opportunity Tribunal, or refer declined complaints to the tribunal if requested by complainants;

(d) To report annually to the Minister on the operation and administration of the Act and the work undertaken, for tabling in the House of Parliament.

73. The Commissioner may also:

(a) Institute, promote or assist in research, the collection of data and the dissemination of information relating to unlawful discrimination;

(b) Make recommendations to the Minister as to reforms, whether of a legislative nature or otherwise, that the Commissioner believes will further the objects of the Act;

(c) Delegate powers and functions under the Act, with the approval of the Minister, to other person(s) holding or acting in a particular public service position.

5. Western Australia

74. The Equal Opportunity Act 1984 proscribes discrimination on grounds of sex, marital status, pregnancy, race and religious or policital conviction. Part III of the Act deals specifically with race, which is defined to include colour, descent, ethnic or national origin or nationality.

75. Discrimination is defined as treating a person less favourably than one would treat a person of a different race in the same circumstances or circumstances that are not materially different, or segregating a person from others of a different race, on grounds of:

(a) The race of the person discriminated against;

(b) A characteristic that appertains generally to persons of the race of the aggrieved person; or

(c) A characteristic that is generally imputed to persons of the race of the aggrieved person.

76. Forms of indirect discrimination are also dealt with. Discrimination is further defined as requiring a person to comply with a requirement or condition:

(a) With which a substantially higher proportion of persons not of the same race as the aggrieved person comply or are able to comply;

(b) Which is not reasonable having regard to the circumstances of the case; and

(c) With which the aggrieved person does not or is not able to comply.

77. Discrimination against applicants for jobs, employees, commission agents and contract workers, discrimination in partnerships and in professional or trade organizations, and discrimination by qualifying bodies and employment agencies is expressly prohibited. Other areas of discrimination expressly proscribed are discrimination in education, in providing access to places, vehicles, goods, services, facilities, accommodation and clubs, and concerning the information required on application forms.

78. A number of exceptions apply, for example, where a person's race is a genuine occupational qualification, where an act is done in order to meet the special needs of a racial group or where acts are done pursuant to law which discriminates on the basis of citizenship. Exceptions from the operation of the Act also cover charitable bequests, membership of voluntary bodies, religious bodies, establishments providing facilities for aged persons, and acts done under statutory authority and short-term exemptions given by the Equal Opportunities Tribunal. Before granting an exemption order, the Tribunal may call upon interested parties to give evidence and make submissions to it and it may examine witnesses.

79. The Act established a Commissioner for Equal Opportunity whose general functions are to:

(a) Carry out investigations, research and inquiries;

(b) Acquire and disseminate information on elimination of discrimination and achievement of the principle of equality;

(c) Arrange and coordinate consultations, inquiries, discussions, seminars and conferences;

(d) Review the laws of the State;

(e) Consult with governmental, business, industrial and community groups;

(f) Develop programmes and policies promoting the principle of achievement of equality;

(g) Perform any other function conferred on the Commission and do anything incidental to the functions imposed on the Commissioner under the Act.

80. The Act provides for equal opportunity in public employment and established a Director of Equal Opportunity in Public Employment. It also requires preparation and implementation of equal employment opportunity management plans concerning which annual reports are to be submitted to the Director by the relevant authorities. The Director may refer matters to the Tribunal, from which the Minister receives reports and which can issue directions.

81. In February 1983 the Western Australian Government appointed a Minister for Multicultural and Ethnic Affairs and on 1 July 1984, the Multicultural and Ethnic Affairs Commission Act 1983 was proclaimed. The objects of the Act are to:

(a) Promote the recognition by the people of Western Australia of the contribution made to the life of the people of the State by its diverse communities;

(b) Encourage the participation of persons of diverse origins, languages or cultures in the life of the people of Western Australia;

(c) Facilitate equal access of persons of diverse origins, languages or cultures to the services and facilities provided for the people of Western Australia;

(d) Encourage people of diverse languages, traditions and cultures among the people of the State to preserve their languages, traditions and cultures; and

(e) Promote cooperation amongst the diverse communities in Western Australia to achieve a cohesive society.

82. The functions of the Commission for Multicultural and Ethnic Affairs established by the Act are specified as follows:

(a) To investigate, report upon and make recommendations to the Minister on any matter relevant to the Act referred to it by the Minister;

(b) To liaise with, consult with and advise government departments and government instrumentalities on the implementation of policies that affect or may affect the people of Western Australia in so far as they impinge on persons of diverse origins, languages or cultures;

(c) To advise the Minister on the application of funds appropriated for the purpose of implementing the objects of the Act;

(d) To make recommendations to the Minister for the purpose of facilitating the achievement of equal access of persons of diverse origins, traditions or cultures to the use of services and facilities provided for the people of Western Australia;

(e) To undertake research into and compile information upon the needs of persons of diverse origins, languages or cultures;

(f) To consult with persons, organizations and groups representing communities of different origins, languages or cultures among the people of Western Australia for the purpose of assisting in implementation of the objects of the Act;

(g) To advise the Minister on any matter relating to immigration policies;

(h) To encourage and undertake dissemination of information with respect to the implementation of the objects of the Act.

6. Australian Capital Territory (ACT)

83. The Australian Capital Territory became a self-governing territory in May 1989. Under the Australian Capital Territory (Self Government) Act 1988, the ACT Legislative Assembly has the power to make laws for the peace, order and good government of the Territory. The Act does not allow the Assembly to make laws with respect to the establishment of courts.

84. The second ACT Government, which has been in office since November 1989, is committed to the introduction of comprehensive anti-discrimination legislation. Race and religious conviction will be included as grounds of unlawful discrimination. The ACT Government is also committed to a policy of multiculturalism. The ACT Government recognizes that the services and programmes it provides should reflect the multicultural nature of the ACT community. It will ensure that all the different cultures, backgrounds, and lifestyles represented in the community are respected and valued.

85. "A Blueprint for a Multicultural ACT" was launched during September 1990. The Discrimination Bill will make discrimination on the grounds of race and religious conviction (amongst others) unlawful in the areas of employment, education, accommodation, provision of goods and services, access to places and vehicles and access to club membership and facilities.

86. The Discrimination Bill will also establish an office of the ACT Humans Rights Commissioner. The Commissioner will receive and investigate complaints about unlawful acts under the Discrimination Bill. The Commissioner's primary task will be to conciliate the complaints he or she receives. Where this is not possible the Commissioner may issue directives: not to repeat or continue any unlawful conduct, to perform any reasonable act or course of conduct to

redress any loss or damage suffered as a result of unlawful conduct and for the payment of damages. The powers of the Commissioner are limited under the ACT Self Government legislation to those of an administrative nature.

87. The ACT Human Rights Commissioner will also have responsibility to promote an understanding and acceptance of, and compliance with the Discrimination Bill. This responsibility includes undertaking research and educational programmes for the purpose of promoting elimination of discrimination on the grounds and in the areas identified in the legislation, and the recognition and acceptance within the community of the principle of equality or opportunity for all persons.

7. Tasmania

88. The Tasmanian Government has a policy of eliminating racial discrimination as defined in article 1, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination. The Government has endorsed the introduction of anti-discrimination, equal opportunity and land rights legislation.

89. Legislation amending the Tasmanian State Services Act 1984 by the introduction of equal opportunity principles has been introduced into parliament and instructions for anti-discrimination and land rights legislation are with the Office of Parliamentary Counsel. The proposed anti-discrimination legislation will make discrimination unlawful on the grounds of race, colour, descent, ethnic, social or national origin (or extraction) or nationality.

90. With respect to "equal employment opportunities", prior to the amendment of the Tasmanian State Service Act 1984, Aboriginal and non-English-speaking-background persons were target groups for equal employment opportunities. The equal employment policy was contained in employment instructions. These instructions are capable of being enforced by administrative provisions within the State Services Act.

8. Northern Territory

91. A recent government discussion paper has formulated a proposal for a Northern Territory Equal Opportunity Act prohibiting certain forms of racial discrimination by any person, group or organization.

92. The Northern Territory Government recognizes the benefits of a multicultural society and supports the policy of promoting cultural maintenance, social justice and the economic advantage of having a diverse culture. The Northern Territory Government supports the concept of a multicultural Territory in positive ways, including:

(a) Through the Office of Ethnic Affairs;

(b) Salary support for a Multicultural Arts Officer;

(c) Travel grants for Aboriginal artists.

C. Special and concrete measures taken in social, economic, cultural and other fields, to ensure adequate development and protection of certain racial groups for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms

1. Developments concerning land rights for indigenous peoples - Aboriginal and Torres Strait Islander Australians

93. In December 1988, Murray Islanders (Torres Strait, Queensland) successfully challenged in the High Court the validity of the Queensland Coast Islanders Declaratory Act 1985. This legislation was passed following the Murray Islanders' claim in the Queensland Supreme Court for recognition of native title over Murray Island, and retrospectively abolished all rights and interests of the indigenous inhabitants of Murray Island. The High Court held that the State Act was inconsistent with the Commonwealth's Racial Discrimination Act 1975. The decision suggests that the Racial Discrimination Act 1975 would extend to significantly "underwrite" existing State land rights legislation by, to a large extent, entrenching existing land rights of Aboriginal and Torres Strait Islander peoples. While legislation could be repealed or amended by State Governments, such changes could not arbitrarily or unjustly impair the relevant Aboriginal and Torres Strait Islander people's right to own property.

> "... this means that if traditional native title was not extinguished before the Racial Discrimination Act came into force, a State law which seeks to extinguish it now will fail. It will fail because s. 10 (1) of the Racial Discrimination Act clothes the holders of traditional native title who are of the native ethnic group with the same immunity from legislative interference with their enjoyment of their human right to own and inherit property as it clothes other persons in the community. A State law which, by purporting to extinguish native title, would limit that immunity in the case of the native group cannot prevail over s. 10 (1) of the Racial Discrimination Act which restores the immunity to the extent enjoyed by the general community."

94. On 23 August 1988, both houses of federal Parliament moved simultaneously to acknowledge that Aboriginal and Torres Strait Islander peoples had occupied Australia for thous ds of years prior to January 1788 and had suffered dispossession and dispersal upon acquisition of their traditional lands by the British Crown. The passage of this resolution was, appropriately, the first item of business conducted in the new Parliament House in Canberra.

95. In March 1986, the federal Government announced that, as most States were making progress towards the provision of secure land tenure for Aboriginal and Torres Strait Islander peoples, it was not necessary to proceed to enact national land rights legislation at that time. The Government indicated that progress made by the States would be closely monitored and, wherever possible, assistance would be given to meet the land needs of indigenous peoples. Table 1 details Aboriginal and Torres Strait Islander land tenure and population as at 30 June 1989.

Table 1

ABORIGINAL AND TORRES STRAIT ISLANDER LAND TENURE: POPULATION AND TYPE OF TENURE, BY STATE

(as at 30 June 1989)

	Aboriginal and Torres Strait Islander population a/	As % total population	Total land area (km^2)	Aboriginal and Torres Strait Islander freehold (km^2)	As % total land	Aboriginal and Torres Strait Islander leasehold (km^2) b/	As % total land	Reserve/ mission (km^2)	As % total land
New S. Wales and Aust. Capital Terr. c/	60 229	1.07	804 000	507	0.06	842	0.10	-	-
Victoria	12 610	0.31	227 600	32	0.01	-	-	-	-
Queensland	61 267	2.37	1 727 200	5	0.00	31 990	1.85	95	0.01
S. Australia	14 292	1.06	984 000	183 649	18.66	508	0.05	-	-
W. Australia	37 788	2.69	2 525 000	35	0.00	103 227	4.09	202 223	8.01
Northern Terr.	34 740	22.43	1 346 200	453 123	33.66	26 009	1.93	45	0.00
Tasmania	6 712	1.54	67 800	2	0.00	-	-	-	-
Australia	227 638	1.46	7 681 800	637 353	8.30	162 576	2.12	202 363	2.63

Source: Commonwealth Department of Aboriginal Affairs.

a/ 1986 census.

b/ Includes pastoral, special purposes and local shire council leases.

c/ Includes Jervis Bay Territory land.

96. In March 1988, following a change of State Government in New South Wales, the State's Aboriginal Land Rights Act 1983 (the ALR Act) was repealed because of perceived administrative and other problems. The ALR Act provided for:

(a) A claims process over certain categories of Crown land;

(b) A three-tiered structure of State, Regional and Local Aboriginal Land Councils; and

(c) Until 1998, the payment of 7.5 per cent of State land tax.

97. In February 1989, the State Government released a Green Paper entitled "New Directions in Aboriginal Affairs". Under proposed legislation, existing title over Aboriginal land would be transferred to a two-tier system of land and development councils. In September 1990, the Premier of New South Wales and the Chairman of the New South Wales Aboriginal Land Council (NSWALC) announced that agreement had been reached on proposed amendments to the ALR Act.

98. The State's Aboriginal Land Rights (Amendment) Act 1990 was subsequently introduced into State parliament and passed in October 1990. The major impact of the amendments will be on the Local Aboriginal Land Councils (LALC), which will be given greater autonomy and increased responsibilities.

99. The Victorian Government introduced a Land Claims Bill into State parliament in 1983, but deferred it in response to Aboriginal community criticism. The question of compensating Aboriginal peoples for dispossession and dispersal from their lands was considered by an all-party parliamentary committee in 1984. There has been no subsequent announcement of the State's intentions in relation to these matters.

100. Following the State elections of March 1985, the Victorian Government introduced legislation to grant freehold title over particular tracts of land at Framlingham Forest and Lake Condah to local Aboriginal communities. The opposition blocked attempts to pass the legislation, and the State Government asked the federal Government to enact the legislation on its behalf. In May 1987, the federal Government gave effect to its March 1986 commitment to ensuring access to secure land tenure for Aboriginal people by passing the Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987. This granted title over a total of 11.5 square kilometres to the Kerrup-Jmara and the Kirrae Whurrung communities respectively.

101. A number of statutes taken together effectively grant land title to certain Aboriginal and Torres Strait Islander communities in Queensland. These include:

(a) The Aboriginal and Torres Strait Islanders (Land Holding) Act 1985;

(b) The Community Services (Aborigines) and (Torres Strait) Act 1984;

(c) The Land Act 1962-88;

(d) The Land Act (Aboriginal and Islander Land Grants) Amendment Act 1982; and

(e) The Local Government (Aboriginal Lands) Act 1978.

These statutes provide for Aboriginal and Torres Strait Islander Community Councils to be established to hold Deeds-Of-Grant-In-Trust (DOGITs) over former reserve areas on behalf of the Aboriginal and Torres Strait Islander communities living on the trust lands. Councils thus established exercise modified local government powers with the trust lands. Council views must be taken into account before exploration/mining leases are granted over trust lands.

102. The process of transferring DOGITs in perpetuity over former Aboriginal and Torres Strait Islander reserves to Aboriginal and Torres Strait Islander communities in Queensland was completed in April 1989. This resulted in 32 Aboriginal Community Councils on the mainland and the inhabited Torres Strait Island reserves being granted control over a total of 31,990 square kilometres of Trust land.

103. The South Australia Aboriginal Lands Trust Act 1966 was the first statute passed by an Australian parliament which granted land to Aboriginal people. The Act established the Aboriginal Lands Trust to hold freehold title to former reserves and lease it back to Aboriginal communities. It also provides for royalties from mining on Trust land to be paid to the Trust.

104. A review of the Act was completed in late 1987 and presented to the State Government. The review process involved extensive consultation with Aboriginal communities to determine whether the current land ownership and administrative provisions were appropriate.

105. The Pitjantjatjara Land Rights Act 1981 and Maralinga Tjarutja Land Rights Act 1984 established corporate bodies for the purpose of holding inalienable freehold title over the Pitjantjatjara and Maralinga lands respectively, when the State Government transferred title to the Aboriginal traditional owners.

106. Following the granting of the lands in 1984, the McClelland Royal Commission was established to investigate the British nuclear tests in Australia. The report made three recommendations which affected Aboriginal people in South Australia. One recommendation was that a Technical Assessment Group (TAG) should report to the Australian Government on options and costs of rehabilitation of the former test sites. As representatives of the traditional owners of the land used for the tests, the Maralinga Tjarutja organization has been part of an ongoing consultative process exercising oversight of the TAG work. The Australian Government tabled the TAG report in November 1990, and is presently preparing a response.

107. A second recommendation affecting Aboriginal people in South Australia involved funding for the purpose of assisting Aboriginal communities with a traditional interest in the former test sites to re-establish links with their lands. Communities in South Australia and Western Australia have benefited by being able to utilize these funds for projects such as:

(a) Undertaking exploratory drilling to locate and purchasing portable pumps to recover the small amounts of potable ground water so located;

(b) Developing infrastructure requirements such as transport and communications links; and

(c) Providing office accommodation.

108. The third recommendation related to compensation for individuals, including Aborigines affected by the tests. In this regard, the Government has not as yet finalized its consideration of the claims lodged by individual Aboriginal people.

109. In Western Australia, there is at present only one statute which provides for any sort of land rights in the State, the Aboriginal Affairs Planning Authority Act 1972. Under this Act, Aboriginal reserve land is vested in an Aboriginal Land Trust (ALT) which can also acquire, hold and manage such lands for the benefit of Aboriginal peoples.

110. In February 1989, under a pastoral restructuring scheme, three pastoral properties in the Kimberley region of the State were transferred to Aboriginal ownership. This followed extensive negotiations between the federal and State Governments which commenced in 1985. The federal and State Governments also continued negotiations with the Catholic Church in relation to the transfer of mission lands to five Aboriginal communities in the Kimberley region of the State.

111. Following a State Government decision in 1987 to permit exploratory mining in the Rudall River National Park, Aboriginal communities voiced concerns about the effects of this activity on their lives. As a consequence, the State Government commissioned a study in May 1988 on the social and economic impact of mining and tourism on the park and on the Aboriginal communities living in or near the park. The federal Government provided financial assistance to the Aboriginal communities in their negotiations with the State Government and mining companies for the study. The study group presented its report to the State Government in July 1989. The State Government has not yet responded to the report.

112. In a recent court case (1990), the High Court held that the Crown in the State of Western Australia is bound by the Aboriginal Heritage Act 1972 (WA), and is therefore prohibited from destroying or damaging Aboriginal sacred sites or objects on those sites other than in limited circumstances. As 93 per cent of the land area of Western Australia is Crown land, this will provide significant protection for Aboriginal heritage in that State.

113. Tasmania remains the only State without land rights legislation of any sort. The federal and Tasmanian Governments have been involved in protracted negotiations on the transfer of secure title over areas of land of particular significance to local Aboriginal communities at Oyster Cove and Wybalenna.

114. The State election of July 1989 resulted in a change of government. One of the Tasmanian Labor Party's pre-election policies, and included in the Labor-Green Accord concluded prior to their taking Government in July 1989, was a commitment to the granting of land rights to the Aboriginal community.

115. Under proposed legislation, the Tasmanian Aboriginal Land Council (TALC) - recently established by the State Government - would hold title (in trust) to the lands granted under State legislation, and have the power to manage those lands on behalf of the Aboriginal communities. The Commonwealth has provided funds to TALC as a contribution towards the consultative process in relation to the return of particular areas of Crown land to the Aboriginal community.

116. The Commonwealth's Aboriginal Land Rights (Northern Territory) Act 1976 (the NT Act) establishes a process which enables Aboriginal people in the Northern Territory to claim unalienated Crown land in the Territory.

117. A number of proposals to establish new Land Councils under the NT Act were received by the Minister during the reporting period. Although the Minister decided not to take any action in some instances due to lack of support, a plebiscite is to be conducted to determine more precisely the degree of support for new Land Councils.

118. In March 1987, the federal Government transferred inalienable freehold title over 403 hectares of land to the Wreck Bay Community Council under the provisions of the Aboriginal Land Grant (Jervis Bay Territory) Act 1986. The land is geographically situated in the south coast of New South Wales.

2. Special measures taken to ensure adequate development and protection of migrants

(a) Translator/Interpreter Services

119. The Australian Government provides free of charge interpreting and translating services to facilitate the settlement of non-English speakers.

120. Interpreting assistance is provided by the Telephone Interpreter Service which offers both an interpreting informatio and referral service over the telephone and, in emergencies, on-site interpreters. The service operates 24 hours a day, 7 days a week in all capital cities and is accessed from outside metropolitan areas by way of a toll-free 008 number.

121. A free translating service for personal documents directly related to settlement is provided in three capital cities, and through the telephone service in other States. The service is also available to voluntary welfare-oriented organizations whose activities supplement the settlements and information programmes of the Department.

122. The federal Government announced its commitment to the establishment of a National Language Services Organisation to rationalize the existing separate service delivery arrangements operated by federal and State Governments. Rationalization would enhance the quality, professionalism and efficiency of services, and would facilitate the filling of service gaps (remote areas, specialist services and rarer languages). A task force has been established to follow the progress of the concept in consultations/negotiations with State/Territory Governments and to undertake management improvements in the government's interpreting and translating services.

(b) Adult Migrant English Program (AMEP)

123. The federal Government, under the Immigration (Education) Act 1971, funds and coordinates an English-language teaching programme with support services to recently arrived non-English-speaking migrants to help them function effectively in Australian society and to acquire the language skills they need to achieve their goals.

124. The AMEP is implemented through the State and Territory education authorities, nine tertiary providers and several community colleges. The programme provides:

(a) Full- and part-time courses, part-time evening classes, community day classes;

(b) Classes in industry;

(c) Vocationally oriented courses;

(d) Special intensive classes for professionally qualified people;

(e) The Home Tutor Scheme;

(f) Individual learning (self-access) centres; and

(g) Correspondence courses.

125. To encourage as many migrants as possible to participate in English lessons, AMEP provides free child-care where necessary. An income test living allowance is also payable in respect of some courses. In 1989/90 there were 70,500 enrolments within the AMEP.

126. Priority for placement is given to migrants within their first five years of settlement.

(c) Community-based programmes

127. The federal Government currently funds/manages seven community-based programmes which contribute to the welfare of migrants and refugees, including:

(a) Community Refugee Settlement Scheme;

(b) Clothing Reimbursement Scheme;

(c) Committee for the Allocation of Loan Funds to Refugees in Centres;

(d) The Grant-in-Aid Scheme;

(e) The Migrant Access Projects Scheme;

(f) The Pilot Equity and Access Projects Scheme;

(g) Migrant Resource Centres.

128. Additionally, the Government:

(a) Staffs and operates on-arrival accommodation (migrant centres and self-contained accommodation);

(b) Provides on-arrival information and orientation to refugees and other migrants and some income support to refugee minors;

(c) Participates with the State Governments in cost-sharing programmes to address the welfare needs of refugee minors.

(d) Migrant Resource Centres

129. The Government provides funds to Migrant Resource Centres (MRCs) to develop, at local level in areas of need, services necessary for migrants which are not provided by existing community programmes and to raise awareness of local service providers of the needs of migrants. Services include multilingual referral and information, and cultural activities.

130. All activities funded respond to the high-priority needs of newly arrived migrants. MRCs are particularly well placed to identify the needs of recent arrivals and to help them access the basic resources they require for effective settlement.

131. Through their direct contact with clients, MRCs are also well placed to develop a strategic view of client needs for services from all relevant providers. In this regard, the Government encourages MRCs to develop and pursue broader access and equity initiatives which identify the needs of people of non-English-speaking backgrounds in their locality and work out ways of meeting those needs.

132. The aims of the MCR programme are:

(a) To participate with the Government in a strategically focused needs-analysis of client groups on the basis of existing census and other data and MRC demand/usage trends;

(b) To develop strategies to meet the settlement information needs of non-English-speaking-background migrants in local areas and to ensure appropriate referral services are available to them;

(c) To continue to foster links with other local agencies and service providers to facilitate access and equity and local settlement planning;

(d) To ensure that programmes provide for the special needs of vulnerable migrant groups (e.g. unemployed, women, youth).

(e) Other services

133. The guidelines for the provision of government-supported services include either legislative or policy measures to ensure that there is no discrimination on the grounds of race. Services that are provided are subject to review by the federal Government, and programmes and services must take into account the needs of women, Aborigines and Torres Strait Islanders, people from a non-English-speaking background, and people with a disability. Services must provide assistance to gaining access to mainstream services or for the provision of special culturally appropriate services.

(f) Refugees

134. Although Australia has no municipal obligation comparable with its obligations at international law, the Convention relating to the Status of Refugees (1951) and the 1967 Protocol have been implemented administratively in Australia. In 1977 the interdepartmental Determination of Refugee Status (DORS) Committee was created to evaluate claims to refugee status under the Convention, and to make appropriate recommendations. Where refugee status is not appropriate, the DORS Committee may recommend that other humanitarian or compassionate factors are present. While the determinations and advice of the DORS Committee do not have legal force, its recommendations that a person be accorded refugee status or otherwise are usually followed by the Minister.

135. The provisions of the "Refugee Convention" are stated to apply without discrimination as to race, religion, or country of origin (art. 3). Particular problems that have emerged in the application process in Australia include:

(a) Many applications for refugee status are unsuccessful because the applicants, although having genuine fears for their safety, are not able to establish that they would be subjected to persecution. An example of the people experiencing this difficulty are those who belong to certain ethnic minorities, such as Sikhs and Tamils. The existence of general danger and violence in a person's country of origin is insufficient, even if there is evidence that the violence is predominantly directed against a particular ethnic or religious minority;

(b) The difficulties for applicants at the point of arrival in Australia in terms of language, legal knowledge and access to advice, and the subsequent difficulties that may exist for an applicant in seeking review of determinations made or procedures followed.

136. Relative to population size, Australia's intake of refugees and displaced persons is amongst the highest of any country. Australia endorses the position of the international community that voluntary repatriation or, failing that, local settlement in a country of similar geographic, cultural

and socio-economic background, is the preferred durable solution for refugees. Accordingly, Australia is also committed to promoting and supporting multilateral initiatives which would create conditions conducive to voluntary repatriation and local integration.

137. The Government's Community Refugee Settlement Scheme (CRSS) provides guidance and assistance to individuals and voluntary groups in Australia who want to become directly involved in assisting the settlement of refugees in Australia. Under the Scheme refugees are settled directly into the community where they are in the care of approved groups of organizations who have volunteered to provide support and assistance for a period of at least six months from the date of arrival.

138. From late 1979 - the time of the first CRSS arrivals - to the end of June 1990, 26,500 refugees had been settled under the Scheme.

139. In addition to the refugee programme, Australia has operated a Special Humanitarian Programe (SHP) since 1981. The programme is a means to assist with the resettlement of displaced persons who are subject to significant discrimination amounting to a gross violation of human rights in their home countries but who do not meet the United Nations refugee definition which is the basis of Australia's refugee intake. The programme also allows Australia to respond to the needs of persons suffering grave human rights abuses while still within their own country.

140. In 1988/89 and 1989/90, Australia's refugee and humanitarian intake spanned more than 30 nationalities in all affected regions of the world, demonstrating the government's commitment to a global programme response and one which is non-discriminatory on the grounds of race, colour, religion, sex, nationality, descent or ethnic origin.

141. Since the introduction of Australia's Global Refugee and Special Humanitarian Program, all levels of service providers in Australia - federal, State, local government and the voluntary sector - have had to face considerable challenges in meeting the needs of this intake. While each new refugee group brings with it very different problems, the experience gained from dealing with an earlier group can be carried over to assist new arrivals. In addition, the refugee community itself has demonstrated initiative and energy in overcoming settlement difficulties. Ethnic organizations have been established which link into federal and State networks by means of programmes such as the Grant-in-Aid Scheme. Leaders are emerging and bridges are being built between the longer-established elements of Australian society and newly arrived groups.

3. The role of media

142. Australia has taken an international lead in acknowledging the influence that the electronic media have in shaping national opinion on sensitive issues including, in particular, racial misunderstanding and discrimination.

143. By the end of 1980 Australia had two government-owned (national) broadcasting services, the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS).

144. The Special Broadcasting Service is an independent statutory authority established by the Australian Government on 1 January 1978. The SBS provides:

(a) Radio broadcasts for 148 hours per week in 55 languages in the Sydney region, and 145 hours per week in 51 languages for the Melbourne region; and

(b) A national multicultural television service introduced specifically to cater to the cultural and language needs of Australians from non-English-speaking backgrounds.

145. The Australian Government has announced, as part of the National Agenda for a Multicultural Australia, that the SBS television service will be extended throughout eastern Australia during 1991-1994.

146. Ethnic programmes are also broadcast by public radio stations, with 5 dedicated stations in major centres and 47 other stations which have some dedicated broadcast time.

147. In July 1989, the Government announced its intention to introduce legislation to establish the SBS as an independent corporation with its own charter. The charter will clearly identify the SBS's intended role of providing multilingual and multicultural radio and television which reflects Australia's multicultural society.

148. In 1985 the Australian Government endorsed over 50 recommendations of a Task Force on Aboriginal and Torres Strait Islander Broadcasting and Communications. The principle themes of these recommendations were:

(a) The development of viable and accessible indigenous controlled and operated broadcasting and communications in order to reinforce and promote the cultural identity of indigenous Australians and to foster general community awareness of indigenous cultures; and

(b) A recognition of the responsibility that the two national broadcasting services have to Aboriginal and Torres Strait Islander peoples.

149. Since 1985 most of the Task Force recommendations have been or are in the process of being implemented. This includes:

(a) The provision and licensing of independent radio and television services in some 80 remote indigenous communities under the Broadcasting for Aboriginal Communities Scheme (BRACS); and

(b) The progressive introduction of special interest Aboriginal and Torres Strait Islander public radio services in centres with significant indigenous populations.

150. The Government also funds media education and training programmes to enable participants in these new services to work towards their desired goals.

II. AUSTRALIA AND THE STRUGGLE AGAINST APARTHEID

151. The Australian Government considers that the policy of apartheid constitutes a basic affront to the dignity of man and is a flagrant violation of fundamental human rights. Since attaining office the Government has accorded a high priority to the reassessment of all aspects of Australia's bilateral relationship with South Africa and has, as a consequence, implemented an extensive range of political, social and economic measures against South Africa.

152. The South African Government is well aware of the Australian Government's early and continuing commitment to the eradication of apartheid. While the current government's policy, in common with that of its predecessors, is to maintain correct diplomatic relations with South Africa, the maintenance of such relations does not imply acceptance of another country's social or political system.

153. The Australian Embassy in Pretoria has played an important role in monitoring human rights in South Africa. Many cases have been taken up directly with the South African authorities. In a number of instances these interventions have proved very successful, but, even where they are not successful, the South African Government is reminded of the international community's scrutiny and informed interest. Even more important than formal diplomatic representations has been the Embassy's ongoing task of maintaining close working relations with local human rights groups, monitoring meetings and protests, witnessing security force action in the townships and generally providing moral and practical support for those involved in the struggle for democracy.

154. Political contact with the South African Government is even more important now that President De Klerk has committed his Government to ending apartheid. It will be necessary for countries like Australia to remain engaged in order to encourage all sides towards a peaceful and democratic settlement.

155. Many countries, particularly in Africa and Eastern Europe, are now for the first time establishing diplomatic relations with South Africa. In many of these cases the new diplomatic contact has high-level political, trading and tourist promotion links. It is important to note that, in Australia's case, diplomatic contact has been part of a carefully balanced package of measures designed to hasten the end of apartheid.

156. Australia does not support moves to expel or suspend South Africa from membership of international bodies. To do so would remove South Africa from exposure to critical views. In addition Australia believes in the principle of universality of membership of international organizations. The Australian Government is not planning to become a party to the International Convention on the Suppression and Punishment of the Crime of Apartheid. Although Australia is sympathetic with the aims and objectives of the Convention, its provisions, inter alia, remain inconsistent with the government's policy regarding diplomatic contacts.

157. The Australian Government supports the efforts of the Front Line States to promote and strengthen regional and national economic development to reduce their dependence on South Africa, by providing bilaterial and multilateral assistance. It is committed to taking an active role in the Southern African Development Coordination Conference (SADCC) in areas such as dry land agriculture, forestry, education and food security. In the first triennium of this programme from financial year 1987/88 to 1989/90, Australia spent $A 100 million in this region. The second triennium has just commenced with a commitment by Australia of $A 110 million over the next three years.

158. In October 1983 the Government announced the introduction of a programme to enable prominent opponents of apartheid to visit Australia. The purpose of the programme is to provide an opportunity to enhance Australian understanding of South African issues, notably apartheid, and to provide representatives of the disenfranchised black majority and other opponents of apartheid with a chance to put their point of view to the Government and the Australian community. Principal among these have been Archbishop Tutu, Dr. Alan Boesak, Breyton Bretenbach, Oliver Tambo and, in October 1990, African National Congress Deputy President Nelson Mandela.

159. In October 1983 the Government announced that the South African liberation movements would be permitted to establish an information office in Australia. Since then, Australia's relations with these organizations, particularly the ANC, have grown considerably. During their period of exile, contacts were maintained through Australia's missions in the Front Line States. Since their unbanning, the Australian Embassy in Pretoria has maintained almost daily contact with the liberation movements in Johannesburg as the complex process of negotiation has begun to unfold.

160. Australia's support for these organizations in this new era of politics has been practical as well as moral. Australia was the first member of the international community to pledge its financial support for the return of refugees, the re-establishment of political organizations, and assistance to the victims of apartheid. In May 1990 Australia pledged $A 15 million towards these goals.

161. Consistent with the Gleneagles Agreement, the Australian Government restricts sporting contact with South Africa. Australian policy is that:

(a) No South African sporting team is allowed entry to Australia;

(b) Australian sportsmen and women are discouraged from competing in South Africa;

(c) "Third country" contacts, in which Australians compete against South Africans in other countries, are opposed;

(d) The Government seeks to persuade Australian sports bodies to bring pressure to bear to have South Africa expelled from international sports federations and competitions;

(e) The Government seeks to persuade other Governments to discourage South African participation in sporting competition in their country;

(f) No individual or representative South African sports person is allowed entry into Australia - in this context there is a prima facie presumption that amateur sports persons who rely on their national organizations for financial support are representative while professionals are not. This presumption may, however, be overturned by facts to the contrary.

(Note: There was a review, initiated by Australia, of Commonwealth sports policy at the London CFMSA [Commonwealth Committee of Foreign Ministers on South Africa] meeting in February 1991. Two important principles were agreed on:

(a) Sports which achieve non-racial unity should be recognized by the international community;

(b) The process of recognition should take place in consultation with representative non-racial sporting bodies.

Also, the practical effect of this agreement is that federal barriers to contact with South African sports bodies, including competition, will be lifted on a sport-by-sport basis once non-racial unity is achieved and endorsed by representative sports organizations.)

162. The Australian Government does not apply a cultural boycott to South Africa as it does a sporting boycott and accordingly does not place any obstacle in the way of Australian actors wishing to visit South Africa. Nevertheless, the Australian Government does not permit any official cultural exchanges with South Africa, nor does it encourage non-governmental organizations to do so.

163. The Australian Government participated in the Commonwealth heads of Government meeting in Nassau in 1985 which agreed on the following restrictions on contacts with South Africa:

(a) First tranche

(i) Bans on new government loans to the South African Government and its agencies;

(ii) Ban on import of Krugerrands from South Africa;

(iii) Ban on government funding for trade missions/promotion in South Africa;

(iv) Ban on sale/export of computer equipment capable of use by the South African security forces;

(v) Ban on new contracts for sale/export of nuclear goods, materials, technology;

(vi) Ban on sale/export of oil to South Africa;

(vii) Strict embargo on imports of arms, ammunition, artillery, vehicles and paramilitary equipment;

(viii) Embargo on military cooperation with South Africa;

(ix) Discouragement of all cultural and scientific events except where they do not contribute towards apartheid.

(b) Second tranche

(i) A ban on air links with South Africa;

(ii) A ban on new investment or reinvestment of profits earned in South Africa;

(iii) A ban on import of agricultural products from South Africa;

(iv) The termination of double taxation agreements with South Africa;

(v) The termination of all government assistance to, investment in, and trade with South Africa;

(vi) A ban on all government procurement in South Africa;

(vii) A ban on government contracts with majority-owned South African companies;

(viii) A ban on the promotion of tourism to South Africa.

164. Additional measures (August 1986) are:

(a) A ban on all new bank loans to South Africa whether to the public or private sector;

(b) A ban on the import of uranium, coal, iron and steel from South Africa;

(c) The withdrawal of all consular facilities in South Africa.

165. The Government has also:

(a) Withdrawn Australian trade representation from South Africa (August 1985);

(b) Reduced South African trade representation in Australia and closed the office of the South African Tourist Commission (August 1986);

(c) Indicated, when a member of the United Nations Security Council, its readiness to support a resolution in the Security Council calling for the introduction of mandatory economic sanctions against South Africa;

(d) Extended to Namibia the economic and other measures applying to South Africa.

166. In addition to these measures the Commonwealth decided to form a Committee of Commonwealth Foreign Ministers which would meet approximately twice a year to evaluate the situation in South Africa and develop Commonwealth responses. The Australian Foreign Minister is a permanent member of this Committee.

167. Australia permits private economic links with South Africa although it is among the least important of South Africa's commercial partners. The value of Australian exports to South Africa has fallen over the period since the imposition of sanctions. In 1989 the value of Australia's exports to South Africa was approximately $A 147 million while the value of imports from South Africa was only $A 110 million.

168. Australian companies may invest in South Africa but there is no official encouragement of such investment and total direct investment represents a minuscule proportion of Australia's total overseas investment. Consistent with the agreed Commonwealth measures all new investment in South Africa by the Australian Government and public authorities has been suspended; all Australian banks and other financial institutions have been asked to suspend making new loans, either directly or indirectly, to borrowers in South Africa, and direct investment in Australia by the South African Government or its agencies is prohibited.

169. The Government does not permit QANTAS to operate air services to South Africa. It also terminated the Australia/South Africa Air Services Agreement 31 October 1987, ending SAA flights to Australia.

170. The Australian Government has taken steps to ensure the implementation of the three principal United Nations Security Council Resolutions relating to the embargo on the sale of arms to South Africa:

(a) Resolution 418 (1977): Mandatory arms embargo on the export of arms;

(b) Resolution 558 (1984): Voluntary embargo on the import of arms;

(c) Resolution 591 (1986): Voluntary strengthening of the arms embargo to include spare parts and military-related equipment.

171. These measures were extended to Namibia between May 1987 and June 1990.

III. INCITEMENT TO RACIAL HATRED, RACIAL DEFAMATION AND ACTS OF RACIAL DISCRIMINATION

A. Federal action

1. International Convention on the Elimination of All Forms of Racial Discrimination

172. Australia's instrument of ratification of the International Convention on the Elimination of All Forms of Racial Discrimination contains the following declaration reserving Australia's position in relation to article 4 (a):

> "The Government of Australia furthermore declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a)".

173. The declaration can be viewed as falling into two parts. The first part, while expressed in terms of a declaration, has the effect of modifying, for Australia, the provisions of the Convention in its relations with other States parties. It should be treated, therefore, as a reservation. The second part of the declaration represents a statement of intent on the part of the Government to seek from Parliament legislation specifically implementing the terms of article 4 (a).

174. Australia lodged the declaration because the Government considered that the Racial Discrimination Act 1975, enacted prior to Australian ratification of the Convention, did not specifically meet the requirements of article 4 (a). The question of whether the declaration is still required will be reviewed in the light of the report of the National Inquiry into Racist Violence (see paras. 176-180 below).

2. The Racial Discrimination Act (1975)

175. The Racial Discrimination Act 1975 (section 17) makes unlawful incitement or assistance or promotion of racial discrimination, whether by financial assistance or otherwise. The Act provides for civil proceedings to be taken by any person alleging racial discrimination. A number of acts involving violence or incitement to violence, which would include racial violence, are punishable under the existing criminal law.

3. National Inquiry into Racist Violence

176. During the middle months of 1988 there was an apparent increase in several Australian States in the incidence of racist harassment and intimidation of anti-racist campaigners and members of various ethnic and Aboriginal and Torres Strait Islander communities. During the same period the

Federal Race Discrimination Commissioner received numerous representations from various affected individuals and groups.

177. The Human Rights and Equal Opportunity Commission considered that the Australian community had successfully accepted immigrants from many nations and cultures and that racist violence, although not widespread in its most serious manifestations, was unacceptable in our multicultural society and required concerted action for its elimination. The Commission therefore authorized the Race Discrimination Commissioner to conduct a National Inquiry into Racist Violence. The Inquiry was announced in November 1988 and its terms of reference required inquiry into:

> "(i) acts of violence or intimidation based on racism directed at persons, organizations or property;
>
> (ii) acts of violence or intimidation directed at persons or organizations on the basis of their advocacy of, support for, or implementation of non-racist policies, including violence or intimidation intended to deter such advocacy, support or implementation;
>
> (iii) current or prospective measures of Government or government instrumentalities to deal with the above matters".

178. At this stage it is clear from the evidence and the submissions made to the Inquiry that the publication of inflammatory racist material causes deep concern and offence among the many racial and ethnic groups vilified in such publications. Many submissions to the Inquiry support legislation against incitement to racial hatred. The appropriateness of federal legislation against incitement to racial hatred is being considered and recommendations in that regard will be included in the report of the Inquiry.

179. From the Commission:

> "The most common objection to 'incitement' legislation, and one of the obstacles to the enactment of such legislation, is that it is said to constitute a restriction on the right to free speech. The right to free speech is undeniably an important human right but, as human rights do not exist independently of each other, this right needs to be considered and balanced with other competing rights. In most jurisdictions there are restrictions placed on the right to free speech which are designed to accommodate competing and potentially conflicting interests. The laws of defamation, for example, are a result of balancing the right to free speech with an individual's right to protection of reputation. Similarly, the right to free speech ought to be balanced with the particular rights and interests of people from racial and ethnic groups who are the victims of incitement to racial hatred."

180. The Government was presented in April 1991 with the report and recommendations for consideration.

4. Prosecuted examples of racial violence

181. The following are some recent instances of racially based violence which have been prosecuted pursuant to the general criminal law:

(a) On 5 December 1988, a dinner of a branch of a political party at which a State Member of Parliament of Chinese racial origin was guest speaker was disrupted. A member of a racist organization was convicted of disorderly behaviour in relation to this incident and put on a good behaviour bond of $2,000 for two years;

(b) Two shotgun blasts were directed against the home of the representative of the African National Congress in Australia, on 27 January 1989. Two other members of the same racist organization have been convicted of offences in connection with their involvement in this matter. One was sentenced to two years' imprisonment and another was sentenced to 18 months' periodic detention, fined $1,000 and put on a good behaviour bond of $1,000 for three years;

(c) A large number of offences were committed by members of another racist organization. The offences included setting fire to or blowing up Chinese restaurants, conspiring to threaten to cause detriment to Asians living in the particular State with intent to cause them to leave, assaulting an anti-racist activist, and various offences committed to raise funds for the organization, e.g. breaking and entering, stealing, false pretences. The three principal offenders were sentenced to 18, 14 and 10 years' imprisonment respectively, while others were sentenced to periods of imprisonment of up to four years and one person was put on probation for three years.

B. State developments

182. The Australian Government's sixth periodic report commented on the Racial Discrimination Act 1975 which prohibits certain forms of racial discrimination and the recommendation by the former Human Rights Commission that Australia's qualification in relation to article 4 (a) should be removed. Since that report there have been developments in several States of Australia toward the introduction of legislation against incitement to racial hatred.

183. In August 1987, the Government of New South Wales established a working party to examine the need for legislation in that State. Following the recommendations of that working party the Anti-Discrimination (Racial Vilification) Amendment Act 1989 was enacted. In effect it amended the New South Wales Anti-Discrimination Act 1977 rendering it unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group. The new Act was launched with a public information campaign to the general public, the media, and ethnic community organizations. Fact sheets for the general public and the media have since been issued and revised to reflect Anti-Discrimination Board experience in monitoring the progress of the new legislation. A joint seminar was held with the Ethnic Affairs Commission for ethnic liaison officers and welfare workers.

Education sessions are planned for broadcasters, journalists and other media personnel, to inform them of their rights and responsibilities under the Act.

184. The Attorney-General of Victoria has established (July 1990) a Racial Vilification Committee to consider whether the State Government should establish legislation to outlaw racial vilification and/or the propagation of race hatred propaganda. The Committee has issued a discussion paper and is consulting with the community to establish the most effective legislative or other measures to eliminate the expression of extremist racist views and the promotion of racial hatred.

185. The Government of Queensland is considering the introduction of anti-discrimination legislation and, in this context, is considering legislation against racial vilification which would make it unlawful for a person, by a public act, to incite hatred towards, serious contempt for or severe ridicule of a person or group of persons on the ground of the race of the person or members of the group. Such legislation could also create an offence of serious racial vilification containing the added element of threatening or inciting others to threaten physical harm towards the person or group or any property of the person or group.

186. The Law Reform Commission of Western Australia recently completed a report on racial hatred which recommended legislative measures against racial vilification. As a result, the Government introduced a bill to amend the Criminal Code by creating offences of publishing or displaying material intended to promote racial hatred, or possessing such material for publication or display. The Government recently passed the Criminal Code Amendment (Racist harassment and incitement to racial hatred) Act 1990. This Act makes it a criminal offence to possess and/or publish material to incite racial hatred or harass a racial group (it is yet to be proclaimed). The introduction of this legislation followed the activities of an extremist racist group in Western Australia.

187. It is intended in Tasmania, in proposed anti-discrimination legislation to be introduced in the Autumn Session 1991, that there will be a racial vilification provision that will make it unlawful for a person,

> "by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of race of the person or members of that group".

188. The Government of the Australian Capital Territory is considering the inclusion of provisions to address racial vilification in its anti-discrimination legislation.

IV. SPECIAL MEASURES TAKEN TO ASSIST GROUPS WHO MAY BE DISADVANTAGED BECAUSE OF RACE OR ETHNIC ORIGIN WHICH COMPLEMENT EXISTING CRIMINAL LAW AND OTHER PROTECTIONS FOR ALL AUSTRALIAN CITIZENS

A. Measures addressing the needs of Aboriginal and Torres Strait Islander Australians

1. The justice system

189. As noted in earlier CERD reports, the Australian Government recognizes that in the area of access to legal support and advice, Aboriginal and Torres Strait Islander peoples are particularly disadvantaged. This disadvantage is reflected in statistics which reveal that Aboriginal and Torres Strait Islander peoples suffer disproportionately from the operation of the criminal justice system.

190. At the time of its inception in December 1986, the Human Rights and Equal Opportunity Commission began research and investigation into the interaction between Aboriginal and Torres Strait Islander peoples and the criminal justice system, focusing particularly on the incidence of Aboriginal and Torres Strait Islander deaths in custody with a view to bringing the facts involved to public and official attention and recommending necessary action. The Commission investigation was superseded by the Federal/State Royal Commission of Inquiry, established by the Federal Government to investigate Aboriginal and Torres Strait Islander deaths in custody which have occurred since 1980.

191. By late 1990 the Royal Commission had completed most of its inquiries and had already published approximately 50 reports on individual deaths. In December 1988, the Commission released an interim report which made 56 recommendations addressing a wide range of issues. The Commission was due to table its final report in May 1991.

192. The interim report recommended that all jurisdictions, if they had not already done so, decriminalize public drunkenness - many Aboriginal and Torres Strait Islander people are imprisoned under this offence. The recommendation has been accepted and implemented by most jurisdictions.

193. Laws imposing prison sentences in default of payment of fines similarly tend to have a greater impact on the Aboriginal and Torres Strait Islander community. The interim report recommended that legislation should be enacted by all jurisdictions to provide alternative sanctions and impose a statutory duty on sentencers to consider a defendant's means to pay a fine when assessing the appropriate monetary penalty. The recommendation was accepted by all jurisdictions which either already had such legislation, or were considering introducing it. The Royal Commission has been assessing the underlying social, cultural, historical and economic issues which have contributed to Aboriginal and Torres Strait Islander deaths in custody. These issues are considered in the final report.

194. The interim report recommended that the Aboriginal Legal Service or, where this is not possible, a person nominated by the local Aboriginal/Torres Strait Islander community, should be notified of the detention of any Aboriginal or Torres Strait Islander person in custody. The report also recommneded that an Aboriginal detainee should be assisted to communicate with the Aboriginal Legal Service and should be entitled to private visits by a lawyer or field officer from that Service. Both these recommendations have been accepted in principle by all jurisdictions although some have qualified their acceptance by pointing out practical problems in isolated areas.

195. The investigations of the Royal Commission have shown that Aborigines and Torres Strait Islanders are over-represented in prison. The interim report recommended that Governments which had not already done so should legislate to enforce the principle that imprisonment should be used only as a sanction of last resort. The final report was presented to Cabinet in May 1991.

2. Social, cultural and economic rights

196. As referred to in the fifth and sixth periodic reports, the Australian Government acknowledges that because of past and current discrimination against, and dispossession and dispersal of Aboriginal and Torres Strait Islander Australians, special programmes of assistance are needed to enable Aboriginal and Torres Strait Islander peoples access to full economic, social and cultural rights. To this end the federal and State Governments finance a multitude of programmes every year. In addition, the Governments commission investigations and inquiries into specific areas of need. Such inquiries often involve:

(a) The examination of existing programmes;

(b) The reporting back to the Government on the effectiveness or otherwise of such programmes; and

(c) The making of recommendations for improvement.

197. Research work and inquiries are also carried out by independent organizations.

3. Employment rights

198. As referred to in paragraphs 160 and 175 of the fifth periodic report, the Australian Government recognizes the interdependence between work opportunities and standards of living, and that Aboriginal and Torres Strait Islander peoples are a particularly disadvantaged group in the areas of employment and training. The Government has given priority, with the release of the Aboriginal Employment Development Policy in November 1987, to the negotiation and development of employment and career development strategies in the public and private sectors. The main objective of developing strategies is to improve the quality of training and job placements through a planned and coordinated approach. Other priorities include support for enterprise and community development activities.

199. The aims of the Aboriginal Employment Development Policy are:

(a) Employment equity with other Australians: to increase the proportion of Aboriginal and Torres Strait Islander people aged 15 and above who are employed from 37 per cent to about 60 per cent;

(b) Income equity with other Australians: a doubling of the median income;

(c) Equitable participation in primary, secondary and tertiary education; and

(d) A reduction of Aborginal and Torres Strait Islander welfare dependency to a level similar to that of other Australians: a reduction in Aboriginal dependency of the unemployment benefit from around 30 per cent of the working age population to only 5 per cent.

200. At its 1989 Congress, the Australian Council of Trade Unions, which is the peak council in Australia for 160 affiliated unions, adopted a strategy on Aboriginal and Torres Strait Islander affairs which, inter alia, states:

> "A priority over the next 12 months in conjunction with Award Restructuring is to ensure that no Aboriginal worker enterprise or organization is Award free".

201. In recognition of the fact that many Aboriginal and Torres Strait Islander workers and/or organizations are not subject to the protection and benefits of direct Award coverage, the Aboriginal and Torres Strait Islander Commission has commenced discussions with the Australian Council of Trade Unions in an endeavour to reach agreement on a common position which will lead to the phasing-in of Award coverage for all employees of Aboriginal and Torres Strait Islander organizations. The provision of appropriate award coverage is seen as an important step in improving the status of Aboriginal and Torres Strait Islander peoples in the open labour market place.

4. The right to housing

202. Paragraph 80 of the sixth periodic report referred to the fact that the provision and upgrading of Aboriginal and Torres Strait Islander housing continues to be a major priority of the federal Government.

203. The federal Government is committed to promoting housing policies based on self-determination for Aboriginal and Torres Strait Islander peoples. In recognition of the fact that Aboriginal and Torres Strait Islander people continue to be the most severely disadvantaged in terms of housing need, the Commonwealth/State Housing Agreement funding for Aboriginal and Torres Strait Islander housing has been increased by 30 per cent since 1988-89 ($A 91m in 1990-91).

204. In future years the provision of Aboriginal and Torres Strait Islander housing will be fully coordinated with the implementation of the National Aboriginal Health Strategy, which has a major emphasis on housing and infrastructure.

205. The Commonwealth/State Housing Agreement (CSHA) provides housing assistance for both renters and buyers, and states in its principles that assistance shall be available to all sections of the community irrespective of age, sex, marital status, race, religion, disability or life situation.

5. The right to public health, medical care, social security and social services

206. The health status of Aboriginal and Torres Strait Islander peoples is the worst of any group in Australia with life expectancy rates of some 20 years less than the average and infant mortality rates at least three times higher than for other Australians.

207. Federal, State and Territory Health and Aboriginal Affairs Ministers developed, in consultation with Aboriginal and Torres Strait Islander peoples, a national health strategy (March 1989). The National Aboriginal Health strategy represents a new commitment to cooperation by all Governments - federal/State/territory - and Aboriginal and Torres Strait Islander communities to work together to address the unacceptably low level of health experienced by Aboriginal and Torres Strait Islander peoples.

208. The Government strongly believes that a tripartite strategy between Aboriginal and Torres Strait Islander communities, the Commonwealth, and States and territories, with emphasis on preventative health, is the best way to achieve equality over time in the standards of Aboriginal and Torres Strait Islander health with that of the wider Australian community.

209. The Strategy recommends action on:

(a) Structural arrangements for greater Aboriginal and Torres Strait Islander participation in policy development and programme implementation;

(b) Environmental health and mental health;

(c) Aboriginal health services;

(d) Education and training programmes for Aboriginal health workers;

(e) Development of a uniform system for collecting Aboriginal health statistics;

(f) Research;

(g) Substance abuse; and

(h) State and territory health service provisions.

6. The right to education and training

210. The fact that very few Aboriginal and Torres Strait Islander peoples continue in the education system beyond the compulsory schooling period has been referred to in previous reports; a higher proportion of Aboriginal and Torres Strait Islander peoples than non-Aboriginal Australians has never attended school. The federal Government considers these facts to be the result of cultural differences and social and economic disadvantage, and has responded by implementing numerous special programmes and student assistance schemes. Although the percentage remains considerably lower than that of the total population, the percentage of Aboriginal and Torres Strait Islander peoples with qualifications has risen over recent years.

211. In 1988 the Government established an Aboriginal Education Policy Task Force to examine the Aboriginal and Torres Strait Islander education situation. It drew together the main findings of several major reports on Aboriginal and Torres Strait Islander education over the past decade and made a series of recommendations to the Government. The Task Force recommended that action to address the issues should be taken in the context of establishing a comprehensive and national long-term approach to Aboriginal and Torres Strait Islander education policy.

212. The Government responded by developing the National Aboriginal Education Policy (AEP). The AEP is based on a set of goals and educational principles that have been endorsed by all the Governments of Australia. They are underpinned by legislation in the form of the Aboriginal Education (Supplementary Assistance) Act 1989. The policy commenced on 1 January 1990.

213. The Policy covers all major sectors of education (pre-school, primary and secondary schooling, post-compulsory schooling, technical and further education, adult education, and higher education) and has four main long-term goals:

(a) To increase the involvement of Aboriginal and Torres Strait Islander people in educational decision-making;

(b) To ensure equality of access to educational services;

(c) To achieve equity of educational participation; and

(d) To enable equitable and appropriate educational outcomes.

B. Measures addressing the needs of migrants

1. Migrant Skills Reform Policy

214. The Australian Government recognizes the interdependence between work opportunities and standard of living, and that some migrants are particularly disadvantaged in the areas of employment and training through:

(a) Barriers to the recognition of overseas qualifications; and

(b) Lack of proficiency in English.

215. In November 1989 the federal Government launched its Migrant Skills Reform Policy providing a more equitable system for improving the recognition of the skills of overseas trained people. Three main strategy elements are:

(a) Encouraging States, territories and professional bodies to cooperatively develop and adopt national competency skill standards in occupations where entry requirements apply, and to apply those standards to people whether they have trained in Australia or overseas; and

(b) Offering to skilled migrants unable to meet those standards immediately, access to a range of employment and training opportunities designed to upgrade their skills to Australian standards; and

(c) Ensuring that appropriate and timely advice, counselling and referral services on skills-recognition matters are available to people pre- and post-migration.

2. Overseas skills recognition

216. The National Office of Overseas Skills Recognition (NOOSR) was established in July 1989 to administer the Government's Reform Strategy. It is located within the Department of Employment, Education and Training. The National Advisory Committee on Skills Recognition was established in November 1989 to complement NOOSR's role of policy coordinating, and to advise the Minister for Employment, Education and Training on skills-recognition matters.

217. NOOSR is pursuing a review programme with the Public Service Commission to ensure that the principles of the government's overseas skills-recognition strategy are consistently applied in areas of federal employment and occupational regulation.

218. NOOSR is promoting and developing improved information on overseas skills qualifications through its Country Profiles programme, improving credit transfer information and improving access to tertiary level or bridging courses for upgrading where this is required by a skilled migrant to meet Australian recognition standards. NOOSR is also pursuing improved skills recognition and educational arrangements through regional and international developments and forums (e.g. UNESCO).

219. The federal Government, through the Strategy, is developing competency-based skill standards (currently for nine professions). Under the auspices of the Department of Labour's Advisory Committee, it is reviewing the NOOSR network of panels and acceptance by State registration, education and training bodies of assessment processes for overseas qualified professional migrants. The Strategy also promotes the elimination of barriers and improved coordinating of occupational English training for migrants.

220. To improve English language skills, the Australian Government has established a range of programmes which target recently arrived migrants in, or intending to join the labour force. The Department of Employment,

Education and Training is presently preparing a Green Paper on a national literacy and language policy for Australia. This is the first step in providing a strategy policy framework for planning the delivery of language, as well as literacy programmes.

C. National Policy on Languages

221. The adoption of the National Policy on Languages with a four-year funding programme in 1987 was the culmination of many years of debate, discussion and inquiry by a succession of governments, professional language associations, community groups and individuals.

222. The Policy is underpinned by four principles which reflect Australia's key language needs. They are:

(a) English for all: Knowledge of English is fundamental for successful education and employment in Australia, and for full and effective participation in many aspects of Australian society;

(b) Support for Aboriginal and Torres Strait Islander languages: Australia's indigenous languages, spoken by Aboriginal and Torres Strait Islander groups, have a unique and important place in Australia's linguistic heritage. They are a vital expression of cultural and social identity for Aboriginal and Torres Strait Islander peoples. They are also important for all Australians;

(c) A language other than English for all: This principle advocates that all Australian children should have access to and be encouraged to take advantage of appropriate learning programmes in languages other than English (including Australian sign language);

(d) Equitable and widespread language services: The need for equitable and widespread language services is a consequence of both the linguistic pluralism of the Australian population and the need for the expert, efficient and effective conduct of affairs with non-English-speaking countries.

223. Australia's literacy and language policy is being reviewed, commencing with the preparation of a discussion paper released in November 1990.

224. The National Languages Institute of Australia was created in 1989 and has a charter to:

> "contribute to improving the quality and relevance of language education in keeping with the goals and principles of the National Policy on Languages and Australia's social, economic and cultural needs".

D. Asian Studies Programme

225. The Asian Studies Programme was established in 1986 with the aim of supporting educational projects of national significance in Asian languages and Asian studies.

V. EFFECTIVE PROTECTION AND REMEDIES

A. Federal measures

226. Paragraphs 91 to 94 in the Australian Government's sixth periodic report detailed the changes to the complaints procedure under the Racial Discrimination Act 1975 which occurred as a result of the amendments made to that Act in 1986 pursuant to the Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Act 1986.

227. Under part III of the Racial Discrimination Act 1975 the Race Discrimination Commissioner may inquire into complaints alleging infringements of part III of the Act and endeavour to effect a settlement between the parties. The Commissioner may direct persons to attend, at a specified time and place, a compulsory conference and produce documents. Failure to do so renders the offender liable to a fine. If this process does not result in a settlement acceptable to both parties, the matter is referred to the Human Rights and Equal Opportunity Commission, which holds an inquiry in the nature of a judicial hearing at which the parties are entitled to be legally represented. At the conclusion of the hearing the Commission makes a determination. If the complaint is found to have been established, the Commission may also recommend the payment of damages. A recommendation by the Commission may be enforced, if necessary, by action in the Federal Court of Australia.

B. State Government measures

1. New South Wales

228. Discrimination laws administered by the Anti-Discrimination Board provide for free confidential investigation and conciliation of complaints of discrimination. During the period 1986-1990, the Board received 1,139 complaints of race discrimination under NSW and federal discrimination laws, and thousands of telephone and personal inquiries about race discrimination matters. Aborigines file more race complaints than any other race or ethnic group.

229. In certain circumstances where complaints cannot be conciliated, they are referred to the NSW Equal Opportunity Tribunal. During the period 1986-1990, the Tribunal received 11 cases of race discrimination. The Tribunal has the power to make orders and award damages of up to $A 40,000 in any proven case of discrimination.

2. South Australia

230. Part VII of the South Australian Equal Opportunity Act 1984 provides that complaints of contraventions of the Act are to be made to the Equal Opportunity Commissioner. For the purpose of investigating complaints, the Commissioner is empowered to require production of documents and attendance at compulsory conferences. Where attempts at conciliation fail, the Commissioner will refer the complaint to the Equal Opportunity Tribunal for hearing and determination. The Tribunal may make orders for damages, injunctions, interim injunctions or orders to perform specific acts to redress loss or damage

suffered by the complainant. A right of appeal lies from the Tribunal to the State Supreme Court which conducts a review of the decision or order of the Tribunal.

231. Since the Act commenced, 83 formal complaints of racial discrimination have been lodged under the legislation. Almost half were lodged by Aboriginal people, who continue to experience discrimination in access to basic services.

232. The focus of conciliation is on achieving both a remedy for the individual and/or an undertaking to effect policy and/or structural changes in an educative framework.

3. Western Australia

233. Under the Equal Opportunity Act the Commissioner for Equal Opportunity handles complaints of discrimination through a process of compulsory conferences and conciliation similiar to that described under the federal Racial Discrimination Act 1975. In situations where conciliation fails, complaints are referred to the Equal Opportunity Tribunal created under the Act, together with the report by the Commissioner. The Tribunal's function is:

(a) To inquire into complaints referred to it by the Commissioner;

(b) To inquire into complaints rejected by the Commissioner where the complaint has applied for review to the Tribunal;

(c) To inquire into matters referred to it by the Minister; and

(d) To carry out any other function referred to it under the Act, under a federal Act or by the Minister.

234. Appeals from decisions of the Tribunal on questions of law can be made to the Supreme Court of Western Australia.

4. Northern Territory

235. Proposed equal opportunity legislation would give effect to article 6.

C. Overview of racial discrimination complaints

236. The sixth periodic report contained details about the nature of complaints lodged under the Racial Discrimination Act in the period from 1 July 1986 to 30 June 1987.

237. Throughout Australia 745 complaints were lodged under the Racial Discrimination Act from 1 July 1987 to 30 June 1990, as follows:

July 1987 to 30 June 1988	205
July 1988 to 30 June 1989	243
July 1989 to 30 June 1990	297
Total	745

238. There were also complaints of racial discrimination lodged under the anti-discrimination legislation of four States: New South Wales, Victoria, South Australia and Western Australia.

239. Table 2 breaks down the complaints lodged under the federal legislation into sub-categories of ethnicity, area of complaint and type of complainant. The statistics indicate a continuing steady increase in the overall number of complaints lodged - increases of 18.5 per cent in 1988/89 and 22.2 per cent in 1989/90.

Table 2

COMPLAINTS LODGED UNDER THE RACIAL DISCRIMINATION ACT 1975

Total: 745

Complainant's ethnicity	1/7/87-30/6/88 No.	%	1/7/88-30/6/89 No.	%	1/7/89-30/6/90 No.	%
Aborigines	81	40	70	29	68	23
People of non-English-speaking background	85	42	109	45	86	29
People of English-speaking background	-	-	30	12	111	37
Complaints lodged by an association	-	-	6	3	-	-
Other (people of English-speaking background or complaint lodged by an association)	24	11	-	-	-	-
Not known/recorded	15	7	-	-	32	11
New South Wales	-	-	27*	11	-	-
Area of complaint						
Access to places and facilities	35	17	54	22	9	3
Land/housing/accommodation	15	7	11	5	17	6
Provision of goods and services	49	24	48	20	84	28
Employment	98	48	91	37	125	42
Advertising/media	4	2	5	2	1	.3
Incitement to unlawful acts	2	1	-	-	2	.7
Education	2	1	7	3	10	3
New South Wales matters	-	-	27	11	-	-
Other	-	-	-	-	49	17
Type of complaint						
Female	62	30	73	30	90	30
Male	124	61	135	56	171	58
Group/organization	13	6	5	2	34	11.4
Not known	6	3	3	1	2	.6
New South Wales	-	-	27	11	-	-
Total	205	100	243	100	297	100

* In the absence of detailed breakdowns from the New South Wales Anti-Discrimination Board, the 27 matters from NSW have not been sub-categoried.

240. Complaints are often difficult to investigate and conciliate as the alleged discrimination is frequently covert and therefore difficult to substantiate. The application of the "dominant reason" provision (section 18) of the Racial Discrimination Act tends to exacerate this difficulty (see "Legislative review" below).

D. Complaint conciliation and inquiries

241. The Human Rights and Equal Opportunity Commission endeavours to resolve all matters accepted as complaints by conciliation. In fact most complaints (on average about 93 per cent) are resolved by this process. The aim of conciliation is to settle disputes by bringing the parties together to reach a mutually satisfactory agreement. This process is one which tends to avoid the adversarial nature, formality and expense often associated with legal matters.

242. The conciliation process is initiated when a complaint is lodged. The complaint is then investigated in an endeavour to establish the facts and to identify the areas of agreement and disagreement between the parties. This is followed by discussion and negotiation between the parties aimed at achieving a settlement. This investigation and negotiation are managed and facilitated by highly skilled conciliators and may involve one or more conferences with the parties. The conciliator acts as a confidential facilitator. Conciliators are required to remain neutral and adhere to the principles of natural justice.

243. Paragraph 94 of the sixth periodic report stated that under the former complaint procedure under the Racial Discrimination Act where conciliation had not resolved matters, certificates were issued to complainants entitling them to institute court proceedings. Since that report one such matter has proceeded to court and a total amount of $A 23,800 was awarded to the complainant in damages.

244. Paragraph 93 of the sixth periodic report detailed the new powers of the Human Rights and Equal Opportunity Commission to conduct its own inquiry into an unconciliated complaint and either dismiss the complaint or find the complaint substantiated and make the determinations it considers appropriate.

245. During the period 1987 to August 1990, eight unconciliated complaints under the Racial Discrimination Act have resulted in Commission inquiry by way of public hearing and Commission determination being made. Five of these matters were dismissed for various reasons and three resulted in findings of racial discrimination.

E. Legislative review

246. During the course of 1989 and 1990, the Human Rights and Equal Opportunity Commission reviewed certain provisions of the Racial Discrimination Act. The review included monitoring the application of the Act in practice, particularly in comparison with alternative legislative provisions and procedures. The Act had been amended in 1986 to provide greater consistency with the provisions of the Sex Discrimination Act. However, the amendments of that time (which were detailed in the sixth periodic report) did not address several issues which have proved to be of significance.

247. The Commission recommended to the federal Attorney-General that the Racial Discrimination Act should be amended in a number of ways (see section I.4 above). The initial proposal was that the Act should be amended, consistent with the existing provisions of the Sex Discrimination Act by:

(a) The removal of the requirement that race be the dominant reason for doing an act;

(b) The prohibition of indirect discrimination on the basis of race;

(c) The provision for the vicarious liability of employers and principals for acts of racial discrimination by their employees or agents.

VI. MEASURES TO COMBAT RACIAL DISCRIMINATION THROUGH EDUCATION AND TEACHING PROGRAMMES, CULTURAL PROGRAMMES AND INFORMATION DISSEMINATION

A. Federal Government

1. The Human Rights and Equal Opportunity Commission

248. By its enabling Act, the Human Rights and Equal Opportunity Commission is required to:

(a) Promote an understanding and acceptance, and the public discussion, of human rights in Australia;

(b) Undertake research and educational programmes and other programmes, on behalf of the Commonwealth;

(c) For the purpose of promoting human rights, to coordinate any such programmes undertaken by any other persons or authorities on behalf of the Commonwealth.

249. Preliminary and detailed research is conducted by the Commission into a number of human rights-related matters. Several such research projects have formed the basis for public inquiries conducted by the Commission. The type of public inquiry it conducts involves investigating the facts in relation to suggested breaches of Australia's international obligations and publicly exposing such breaches or have been ascertained to have occurred. In addition, its inquiry function includes intervention in private legal proceedings that involve human rights issues thereby permitting the attention of the courts to be drawn to any relevant and significant issues arising by reason of Australia's international obligations which may otherwise not be put before them, or not be put fully and adequately. The aim is to seek the development and expansion of the common law so as to embrace the principles of international human rights instruments and jurisprudence.

250. Since January 1987 the major projects undertaken by the Human Rights and Equal Opportunity Commission under the Racial Discrimination Act have been aimed at achieving positive changes not only in public attitudes to Aboriginal and Torres Strait Islander peoples and people from non-English-speaking backgrounds, but also in the way in which these people are treated in Australian society. In each area of the Commission's work on racial discrimination - complaint handling and conciliation, the conduct of public inquiries and involvement in public events and activities - the community education factor is central and crucial.

251. The major projects undertaken in pursuance of combating racism and intolerance and promoting human rights in Australia include:

(a) Schools programme: In the States of New South Wales and Tasmania, the Commission, in cooperation with the relevant education departments, devised and implemented programmes in the public school sector. Classroom teachers and curriculum specialists developed a set of in-service materials which included materials on Aboriginal cultures, history and other relevant

contemporary issues, and on multiculturalism. The New South Wales project resulted in a resources manual and the project is continuing under the auspices of the New South Wales Department of School Education;

(b) Race relations in the workplace: Between July 1987 and June 1988, 48 per cent of complaints lodged under the Racial Discrimination Act were related to employment. In view of this, the Racial Discrimination Commissioner considered it necessary to conduct a project to advance the understanding of workers and management as to how racial discrimination operates in the workplace and to develop practical steps to overcome such discrimination or lessen its effects. The Race Relations in the Workplace programme was developed early in 1988 and developed in consultation with the Office of Multicultural Affairs (OMA). The programme focused on private sector employment and presented the case that the development of good race relations is an important aspect of industrial relations practice. Two pilot projects were conducted with two companies, one in New South Wales and one in Queensland. The pilot projects were effective and have resulted in cooperation between the Commission, OMA, union and employer groups in developing practical training materials;

(c) Immigrant women's information project: During 1988 the Commission undertook a pilot project to communicate with women from non-English-speaking backgrounds about their rights under the Racial Discrimination Act and the Sex Discrimination Act. The project involved a series of community announcement broadcasts in three different community languages on ethnic radio stations. A printed information kit was made available following the radio announcements;

(d) Community outreach project: During 1988 and 1989 there was a great deal of public and media debate about race issues such as multiculturalism and immigration. In order to gain insights into community attitudes about these issues the Race Discrimination Commissioner visited numerous communities and groups throughout Australia. Of considerable concern was the view that the ongoing debate about Australia's immigration policy was being used by some people within the community to promote racist views;

(e) Community relations strategy: In July 1989 the Australian Government announced the community relations strategy in its National Agenda for a Multicultural Australia. The objective of the strategy is to foster and promote awareness of the importance of good community relations between all racial and ethnic groups in Australian society. The Race Discrimination Commissioner is a member of a working party including three government departments active in the area of race issues. A draft strategy has been devised, and during 1991 each member organization on the working party will implement a number of projects as part of the strategy;

(f) Human Rights Congress 1989: The Congress was held in Melbourne in September 1989. Individuals, non-governmental and governmental organizations from throughout Australia attended the three day Congress. Speakers, seminars, discussion forums and workshops addressed a wide range of human rights issues including:

(i) The state of community relations in Australia;

(ii) Issues relating to the Convention on the Elimination of All Forms of Racial Discrimination;

(iii) Race relations in the workplace;

(iv) Racist violence in Australia;

(v) Legislation for a multicultural Australia;

(g) Consultations and coordination: The Commission continues to work closely on a variety of projects with other organizations - particularly those representing Aboriginal and Torres Strait Islander peoples, people from non-English-speaking backgrounds, people with physical and intellectual disabilities, and women. The Commission continues to meet with and address all types of audiences;

(h) Publications: The Commission has a broad publications programme. In addition to the publication of reports, submissions and occasional papers, various series of explanatory leaflets and pamphlets about the Commission and the legislation it administers, including the Racial Discrimination Act, are published and widely distributed amongst the public.

252. Since the sixth periodic report by the Australian Government, the Commission has undertaken several major research projects and public inquiries to investigate possible breaches of Australia's international obligations in human rights-related matters, and has publicly exposed such breaches as ascertained. Major project descriptions follow:

(a) Overseas medical practitioners' project: During 1989 the Commission received representations from many overseas-trained doctors who could not gain recognition of their medical qualifications in Australia. They believed that the policies and practices of medical registration boards and other organizations were racially discriminatory. In 1990, following these representations, the Race Discrimination Commissioner decided to undertake a research project to determine what, if any, issues of racial discrimination were raised by conditions of recognition of overseas medical qualifications. The results of this research are presently under consideration by the Commission;

(b) National Inquiry into Racist Violence: As discussed in more detail above in Chapter III, the Race Discrimination Commissioner has conducted a National Inquiry into Racist Violence. The Inquiry received several hundred written submissions and took oral evidence at public hearings from approximately 200 witnesses. One of the issues that became clear very early in the Inquiry process was that many victims of racist violence were reluctant to discuss their experiences or report them to police, social workers or other public officials. In response to this understandable reluctance, the Commission developed an extensive outreach programme to Aboriginal and Torres Strait Islander peoples and people from non-English-speaking backgrounds in particular, which involved detailed field research amongst various communities. As a result of the public hearings, written submissions and fieldwork activities, the Inquiry has received information from over 2,000 people throughout Australia. Its report will be released in mid-1991.

(c) Toomelah inquiry: The Commission announced a public inquiry in May 1987 to investigate the social and material needs of the residents of New South Wales-Queensland border towns. This was the first public inquiry undertaken by the Commission. The Toomelah Report was released in June 1988. The major finding was that the Aboriginal communities in those towns were living in appalling conditions that were not experienced by non-Aboriginal residents. Explanations for the communities' standard of living included the failure of relevant government bodies to acknowledge their responsibility in providing basic goods and services to the communities such as education, health and housing. The Toomelah inquiry succeeded in providing a case study of the fundamental problems that impede the basic human rights of Aboriginal and Torres Strait Islander people in Australia. Following the report's publication, the Commission received representation from many parts of Australia that the Toomelah circumstances were not isolated and were indeed paralleled in many other non-urban Aboriginal and Torres Strait Islander communities. The Inquiry raised the awareness of non-Aboriginal Australians and resulted in government action to improve the situation at Toomelah. In March 1989, the Commission revisited the communities and later released a further report in which the conditions at Toomelah were reviewed. The Premier of New South Wales also visited. One result has been greater cooperation between the federal, State and local Governments in relation to the provision of services and community infrastructure. The Commission continues to monitor the situation;

(d) Cooktown inquiry: During July and August 1990, a public inquiry was conducted into the provision of health and medical services to the Aboriginal communities of Cooktown, Hopevale and Wujal Wujal in far northern Queensland. The inquiry was initiated following several complaints lodged under the Racial Discrimination Act alleging that the medical treatment provided by Cooktown Hospital constituted racial discrimination. The Commission anticipates releasing a report during 1991;

(e) Aboriginal water project: One fundamental problem which emerged as a result of representation made following the Toomelah report was the provision of water in remote Aboriginal communities. The Commission decided to conduct a national project on water supply and drainage conditions in Aboriginal communities around Australia. The project consists of two parts: a broad overview of the water situation, compiled from available data; and an intensive study of the situations in 10 individual communities. The first stage of the study has been completed.

2. Consumer education project

253. The Federal Bureau of Consumer Affairs is currently conducting a consumer education project for ethnic communities. The project is funded by the National Agenda for a Multicultural Australia and its purpose is to provide information about consumer rights, responsibilities and ways of solving consumer problems. The project is aimed at those people with poor or no English language skills and seeks to provide them with information to which the rest of the community has access. It is based on research into the consumer experiences and problems of particular communities and an information campaign is tailored to meet the needs of each community. The elements of the

project include discussion programmes and announcements on ethnic radio, press articles and advertisements, and a poster and information handbook for community workers.

3. Royal Commission into Aboriginal Deaths in Custody

254. The Interim Report of the Royal Commission into Aboriginal Deaths in Custody made several recommendations aimed at promoting understanding between the police, prison officers and Aboriginal and Torres Strait Islander peoples. These include:

(a) Giving positive encouragement to the recruitment of Aboriginal and Torres Strait Islander peoples to police forces and as prison officers;

(b) Training to ensure that police and prison officers and others whose work will bring them into contact with Aboriginal and Torres Strait Islander peoples have an understanding and appreciation of Aboriginal and Torres Strait Islander histories, cultures and social behaviour, and the ability to communicate effectively and work with Aboriginal and Torres Strait Islander people; and

(c) That Aboriginal and Torres Strait Islander police aide schemes should operate as a true link between the police and the Aboriginal and Torres Strait Islander population. These recommendations were accepted in principle by most jurisdictions.

B. State Government

1. New South Wales

255. The Anti-Discrimination Board provides community education against prejudice and promotes the principles of non-discrimination and equal opportunity through consultation with community groups and through education programmes. Members of the Board and its Aboriginal officers have regularly visited country areas to counteract endemic prejudice against Aboriginal people through education and consultation, and to conciliate cases of race discrimination notably involving access to services and recreational facilities, and housing.

256. The Board has assisted the Department of Education in developing and implementing an anti-racism policy in schools through its personal development syllabus.

257. The Board and the Ethnic Affairs Commission assisted the police in developing a set of ethnic or racial descriptions to apply to alleged offenders. The descriptions were devised so as not to offend ethnic communities, and are only to be used if actual ethnicity or nationality is unknown and no other more useful identifying characteristics can be used.

2. South Australia

258. The Equal Opportunity Commission's contribution has been:

(a) Production in 26 languages of posters outlining the coverage of the South Australian Equal Opportunity Act;

(b) Pamphlets in seven languages other than English: a general one covering the law and the work of the Equal Opportunity Commission, and one on sexual harassment;

(c) A section in the South Australian Equal Opportunity Directory containing the details of 23 organizations working in the area of racism (the Directory is distributed to 120 organizations and to many libraries and community information centres);

(d) Presentations to four winners of community-based Equal Opportunity Achievement Awards;

(e) Membership in the Multicultural forum;

(f) Membership in the Community Relations Advisory Committee, which made recommendations to Government on a range of matters (including legal) concerned with preventing/dealing with racism and racist violence;

(g) Media contacts on relevant issues e.g. racist basis for refusal of entry and of service, racism in sport, problems with overseas qualifications, National Inquiry into Racist Violence, complaints to the Human Rights and Equal Opportunity Commission, racial vilification;

(h) Scheduling for early in 1991 of a programme based on consultation with ethnic communities and organizations aimed at informing non-English-speaking-background women of rights given them by Equal Opportunity laws;

(i) Production of a video, Equal Opportunity and You, for general use, which uses a race discrimination complaint as its major case study.

3. Tasmania

259. The principles enunciated are being adopted in the Education Department curriculum and in the training of teachers.

260. Culture facilities are made available in services in response to perceived needs, e.g. interpreters for persons attending court proceedings.

261. The State media do not at present have a role in the dissemination of information to combat racial prejudices which lead to racial discrimination. It is likely that when the anti-discrimination legislation is enacted such material will be developed.

4. Northern Territory

262. The Department of Education has both an Equal Opportunities in Employment commitment and an Equal Opportunities in Education policy - and thus continues to ensure that racial and other forms of discrimination are absent in the employment, placement and promotion of its staff, and in the provision of programme choice and educational opportunity for its student body. In addition, in regard to the Northern Territory's largest minority group, a specific Aboriginal Education Policy and a separately funded advisory body continue to advocate and monitor a range of affirmative action programmes.

263. There have recently been comprehensive negotiations between federal, State and Territory Government and Aboriginal advisory bodies on the need for programmes to bring about improved educational results for Aboriginal students. As a result, the Northern Territory has joined in bilateral commitment with the federal Government in a number of major initiatives under the aboriginal Education Policy. A management unit has been set up, in close association with the Aboriginal advisory group, to monitor these initiatives, which cover curriculum development, staff induction, liaison and mentoring services.

264. In 1989/90 the Northern Territory Government has placed major emphasis on the development and introduction of programmes in languages and culture other than English, focusing particularly on Indonesia and South-East Asia. This includes a major expansion in adult programmes as well, and is the basis of a 10-year implementation strategy being prepared for circulation which has as its aim the provision of a language other than English to every student by the year 2000.

265. Special education programmes, which are compulsory in all primary grades, include units which are soundly based in a variety of Northern Territory cultural contexts and which demonstrate both the diversity and acceptability of each.

5. Australian Capital Territory

266. Human rights education is an integral aspect of the ACT school curriculum. Social justice and multicultural subjects are included as part of the social education curriculum taught in the ACT.

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